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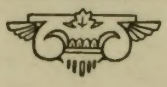

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T H E S I S

Workmen's Compensation in Connecticut

by

HENRY GEORGE RUSSELL
(B. B. A. Boston University 1927)

submitted in partial fulfillment of
the requirements for the degree of

MASTER OF BUSINESS ADMINISTRATION

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COLLEGE OF BUSINESS ADMINISTRATION

THESIS

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I N T R O D U C T I O N

Scope of Thesis.--The present thesis is an attempt to present an interpretation of Workmen's Compensation in Connecticut with particular reference to the principles of economics involved and the legal machinery set up to give the Connecticut Act practical effect.

In making this study the writer has attempted to do considerably more than merely to discuss the provisions of the Connecticut Compensation Law as construed in the text of the Act as amended in 1931. The entire question of industrial accidents as well as the probable preventative measures against such occurrences are first set forth to show the necessity for this type of legislation in every community making pretentions to civilization. While the enactment of laws of this type are well-nigh universal now in all communities other than primitive ones, and while such laws are conducive to a more full measure of social justice in the situations to which they apply than the earlier so-called common law codes, and while the subject-matter of this thesis is chiefly concerned with the necessity for, the history of, and the proper functioning of such a law in the State of Connecticut, there is a somewhat extensive discussion of the psychology of accident prevention in the first chapter, because the writer believes that the most eloquent pleas which our industrial leaders can make to prove that their attitude is a laudable one is to do all in their power to make industrial accidents a thing of the past.

The attitude of the courts prior to the enactment of a compensation law in Connecticut and other states has been discussed in considerable detail, because, unbelievable as it may seem, the Compensation Act of Connecticut, as well as the similar codes of other states, has grown out of this body of American precedents -- not as a logical development, but as an opposition movement fermented by the manifest injustice and inapplicability of the antiquated common law code. In studying either the common law rules and decisions which rather recently governed the courts in industrial accident cases, it is neither feasible nor wise to study the rules and precedents of one state without reference to the others; for, in this branch of American law as well as in most divisions of our law, while courts of one state are not bound by the decisions arising in the courts of any other state, the judges are inclined to study the rules and decisions of neighboring states and are frequently influenced by such decisions. English decisions are also consulted and frequently cited in authority. Therefore, any study of the Connecticut Compensation Act which was narrowly exclusive of the experience sustained in other states would be no study at all. Connecticut, in a manner similar to that of many of our American states, profited to a large degree from the experience of other states in drafting its compensation code. The results of similar legislation in Massachusetts were carefully considered; later, after the enactment of a similar law in Connecticut, the legislators of California found unique provisions in the Connecticut Act which were worth emulating.

In tracing the history of the agitation for and against the enactment of the Compensation Act in Connecticut one finds that the various committees which were appointed to study the situation and proponents of the law consulted European experience with this type of legislation. References to the experience of Germany and Great Britain with compensation laws are so frequent in the work of writers on this subject as to make them seem almost commonplace. Governor's committees, experts testifying at public hearings, and other interested parties asked or answered questions pertaining to foreign practice in regard to the question of the compensation for industrial accidents. It is, then, not out of place in a comparative study such as the present thesis to survey rapidly the outstanding features of similar European codes and to compare them with the provisions in the Connecticut Act; for, if it had not been for such an earlier and superior approach to this important social problem on the part of European legislators, neither Connecticut nor any other American state would have had the temerity to enact such a code. We Americans are supposed to be a pioneering and progressive people, but when it comes to a consideration of social legislation we are far behind such small and far-flung political entities as Finland or New Zealand. In social legislation we have been reactionary. Our individualistic philosophy has been responsible for that. "Every man for himself and the devil take the hindmost" has been the watchword of our over-grown frontier society; but now when it is quite apparent that the devil will not only take the hindmost but the foremost as well, we are beginning to abandon

this particular type of rugged individualism. It is, then, not as an academic frill but as a necessary and integral part of this study that the writer includes a section on European experience. In his opinion there are yet lessons to be learned.

General Treatises -- Their Value and Limitations.--There are not more than ten treatises covering the various phases of the subject. In the course of preparing the present thesis the writer found the following treatises valuable in the sense that they furnish a prospective of the subject from various angles which enabled him to make a more detailed study of the Connecticut Compensation Act and to compare the provisions of the Connecticut Act with similar laws in other states and countries:

1. FRANKEL and DAWSON, "Workingmen's Insurance in Europe", 1910
2. I. M. RUBINOW, "Social Insurance", 1913
3. R. H. BLANCHARD, "Liability and Compensation Insurance", 1917
4. J. E. RHODES, "Workmen's Compensation", 1917
5. MICHELBACHER and NIAL, "Workmen's Compensation Insurance", 1925

In addition to the general treatises listed above there are a number of other works which contributed specialized information indirectly related to Workmen's Compensation; Certain articles on labor relations in the American Economic Review, chapters on negligence from Archer's "Law of Torts" and the discussion on negligence in the Modern American Law series, extracts from Roscoe Pound's "The Spirit of the Common Law", and a chapter on safety psychology from Heinrich's "Industrial Accident Prevention".

Special material applicable to conditions in Connecticut alone was naturally the most difficult to obtain. The most valuable data on Workmen's Compensation in Connecticut is contained in public documents, stenographic reports of legislative committees, the text of the Workmen's Compensation Act, the bound reports on Connecticut Compensation Decisions, and the reports of the Connecticut Supreme Court of Errors. Access to some of this material is obtained only with difficulty, and all this material is legalistic and technically expressed. It has been the task of the writer of the present thesis, therefore, to study this original source material, to classify it according to a theory of principles, and to fit it into its proper place in the historical, social, and legal perspective which he had formulated from his study of general treatises and other material on the subject not pertaining to Connecticut: The offices of the several compensation commissioners of Connecticut, the State Library at Hartford, Connecticut, and the Business Branch of the Hartford Public Library. He is appreciative of the courtesies extended to him by the various officials connected with the above agencies.

The general treatises listed above are written for the college student, the insurance official, or the general reader. The attorney wishing a more extensive discussion of the finer points of law involved will find the following legal treatises

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helpful and more applicable to his needs: Boyd - "Workmen's Compensation Act", Glass - "Workmen's Compensation Act", Honnold - "On Workmen's Compensation".

It will be seen that while there is considerable material on the subject of Workmen's Compensation, the vast majority of this material is general in its nature and therefore directly inapplicable to the conditions in any particular community, where the adjustment of disputes arising out of industrial accidents depends upon the statute enforced in that particular community. The general treatises, then, cannot be specific in their application; they can only be suggestive of what form the legislation should take. In the present study the writer has attempted to deduce a set of principles from the text of the Connecticut Act, and at the same time to compare the provisions in the Act with the similar provisions in other compensation laws. He has attempted to present a comparative and critical study as well as a factual one. He has spared no one in his efforts to present the facts as he found them in their garb of stark realism. If it be thought that his attitude is hyper-critical of traditional and hide-bound methods of dealing with the problems arising out of the industrial accident, his answer is that an honest effort to alleviate human suffering is adequate justification for his or any other attitude!

P A R T O N E

HISTORICAL DEVELOPMENT

O F

WORKMEN'S COMPENSATION

CHAPTER I

INDUSTRIAL DEVELOPMENT AND THE RISING TOLL OF ACCIDENTS

One naturally associates industrial development with an increased standard of living, for a great increase in the production of goods should result in an increase in real wages to all engaged in the productive effort. While in general this increased standard of living has accompanied the application of machinery and mass production methods to industry, there has been an army of hard workers to whom industrial progress has brought death and privation; for industrial expansion in company with other states of empire building has taken its toll of life and limb and has left its maimed, its widows, and its orphans to utter their bitter imprecations upon the ruthless God of Progress.

Lack of Statistics.--The advancement of trade and commerce has been purchased with millions of human lives sacrificed in the countless wars brought on by commercial rivalry. Frontiers also have been extended at the cost of the lives of a large proportion of those who attempted to carry the civilization of their country to its outermost borders. These two types of empire building are so familiar to us that they need no illustration. Industrial expansion within the realm, however, while generally not looked upon in the same glamorous light as that in which we view a great increase in foreign commerce or the extension of a nation's boundaries, is nevertheless as great a factor in the economic development of a country. Loss of life and other casualties, though not nearly

so readily associated with industrial expansion as with wars of commerce, are, notwithstanding, a considerable factor in any estimation of the price which must be paid for material progress. Because casualties are so readily associated with war, one finds statistics relating to the numbers killed, wounded, and missing at hand. Figures for Industry's casualties, however, particularly in the United States, are not so available; yet the number of workmen killed, maimed or otherwise injured, is appalling. In 1908 F. L. Hoffman, an authoritative statistician in the field, estimated the number of non-fatal accidents in the United States at 2,000,000. * Professor Seager of Columbia University writing in 1910 ** quotes this figure of Mr. Hoffman's, and I. M. Rubinow in a more extensive work published in 1913, *** although he gives "about 2,700,000", as his estimate, also refers to Mr. Hoffman's figure of two million. With authorities writing on industrial accidents in the five-year period between 1908-1913 quoting a single estimate made at the beginning of that period, there can be little doubt that no reliable statistics on the number of industrial accidents in the United States existed.

One of the leading authorities on social insurance in the United States writes: "Very few states collect any accident statistics at all, in still fewer of them are they properly analyzed and studied, in none of them is the number of acci-

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*HOFFMAN, F. L., "Industrial Accidents", -- Bulletin of the U. S. Bureau of Labor, No. 78, September 1908.

**SEAGER, HENRY ROGERS, "Social Insurance", p. 28.

***RUBINOW, I. M., "Social Insurance", p. 55.

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dents reported at all near the actual number occurring, and in each of them they are gathered and elaborated in a different way". *

Necessity for Statistics in Connecticut.--During a recent interview with one of the five compensation commissioners of the State of Connecticut, the writer queried this commissioner regarding the matter of industrial accident statistics. The commissioner, who is not only an exceptionally well qualified man for his office, but who is also doing his utmost to discharge the difficult and exacting duties coming within the scope of his authority, readily admitted that no such source of statistical information is available. This well-trained and zealous public officer was well aware of the value of such information. He had long been cognizant of the purpose to which he might employ such statistics in enforcing the compensation laws in his district, and in devising schemes calculated to decrease the number of industrial accidents, but the state legislature has shaved the appropriation allotted to workmen's compensation to such an extent that no provision can possibly be made for the collection and tabulation of statistics. Short-sighted and greedy industrialists, who can see no farther than the net profit on their annual profit and loss statements, exert their influence to nullify the effects of an elaborate and well-drafted compensation code. Their avariciousness is exceeded only by their stupidity, however, for this alert commissioner is well aware that the most effective remedy for social losses due to industrial accidents is the devising of preventive measures which in lowering the casualties would automatically reduce the insurance premiums which many of the employers so re-

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* RUBINOW, I. M., "Social Insurance", p. 84

sentfully and reluctantly pay.

Statistics and the Prevention of Accidents.--The prevention of industrial accidents with their attendant individual suffering and social consequences rather than the enforcement of compensation laws should be the goal of social legislators of the future. In the State of Connecticut this phase of the industrial accident problem would be handled best by providing each of the five district commissioners with the necessary statistical assistance to carry out detailed studies inquiring into the cause of industrial accidents. In the course of his daily work the commissioner acting in the capacity of impartial referee on a claim made by an employee against his employer comes in contact with a sufficient amount of the detailed background out of which the accident arose to enable him to intelligently ascertain its cause. The commissioners inevitably accumulate a wealth of data related to the environment of the worker both on the job and outside. They are immeasureably more competent to direct the research involved in a study of accident prevention than any other agency, but they have neither the time nor the energy to undertake the detailed work which would be involved after they have served both employer and employee as arbitrator and mediator.

Psychology and Accident Prevention.--Corporations engaged in transportation, however, have successfully conducted research of the type indicated. Their unsuccessful participation in a legal tilt with the legal representatives of injured commuters and the subsequent effect upon their income statement, rather than humanitarian motives, or feelings of personal sympathy for injured employees, no doubt, accounts for their scientific approach to the problem. But irrespective of their

approach, whether it be balance sheet or otherwise, if the effect is to alleviate human suffering, or better still, make its occurrence less frequent, future generations may feel grateful. Perhaps it was this antipathy to transportation companies on the part of juries which resulted in the very thorough and scholarly study carried out at the instigation of the Boston Elevated Railway in 1927.

The Boston Elevated Railway study referred to was undertaken in cooperation with the Personnel Research Federation. One of the main findings of this research was to the effect that all collisions were attributable to eighty-five per cent of the operators of electric cars and buses, fifteen per cent of this group of employees having a spotless record in this respect. It was further found that while an average of 2.3 collisions might be attributed to each member of this accident-sustaining group, upon closer study of the records of the personnel involved a special group of fifteen per cent of the total driving personnel sustained an average of 8.2 collisions each. H. W. Heinrich, Assistant Superintendent of the Engineering and Inspection Division of the Travelers Insurance Company of Hartford, Connecticut, commenting on this study says: "Basic causes of accident proneness were determined. In some cases these were medical, in some attitudinal, and in others lack of information and training. Treatment was devised to correspond to individual conditions. Assistance, instruction, and advice were given to compensate or to correct lack of abilities, tendencies, and deficiencies. It was found that only a relatively small proportion of deficiencies were matters of unalterable native endowment". *

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* HEINRICH, H. W., "Industrial Accident Prevention", p. 134

The Boston Elevated Railway study was distinctly psychological in its approach. It will, however, be readily seen that studies similar to this one are by their very nature long, painstaking, and expensive undertakings. Such studies, moreover, are practically limited to groups of employees engaged in work of a similar and standardized character. Heinrich lists the following types of employees as the particular individuals to whom this kind of psychological research is most applicable: taxicab and bus drivers, motormen of trolley cars, locomotive engineers, salesmen, meter readers, collectors, coal miners, and workmen performing the great variety of common machine and hand operations in the industries which require one employee to perform work of practically the same kind and under the same circumstances as that done by many other workers.

It is the opinion of Heinrich that although psychology in accident prevention is a fundamental of great importance, industry in general has not progressed sufficiently to adopt the psychological approach. He considers the following to be the three logical steps in accident prevention:

"Step 1. Guarding and elimination of machine and physical hazards without use of cause-analysis.

Step 2. Selection of remedies based on practical cause-analysis that stops at the selection of the first real proximate and most easily prevented cause (such procedure is advocated in this book) and considers psychology when results are not produced by simpler analysis.

Step 3. Selection of remedies based on psychological analysis of underlying causes".

"Industry in general", he concludes, "has not yet progressed beyond the first step. The ideal situation is one wherein all three steps are taken". *

We must agree with this writer in his conclusion that by applying psychological methods to research in accident prevention industry will more nearly approach the ideal in this laudable work, this leaving little for the critics of our industrial organization to complain of and freeing legislators to a great extent from the necessity of enacting laws which at best are poor substitutes for the lives and limbs of the victims of industrial tragedies.

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* HEINRICH, H. W., "Industrial Accident Prevention", p. 128

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* REINHOLD, H. W., "Industrial Accident Prevention", p. 152

CHAPTER II

INADEQUACY OF COMMON LAW REMEDIES

Despite the alleged flexibility of the common law, an attribute which writers in the field of jurisprudence point to with no small amount of professional pride, that flexibility has proven to be more a myth than a fact in the face of revolutionary industrial changes. The application of science and inventive genius to industry has wrought such colossal changes in the material environment which surrounds the workmen that not only has he become mentally confused and physically endangered but the jurists in their efforts to adapt an obsolete legal system to these unforeseen conditions have met with confusion equally as great, although not as threatening to their own physical well-being. Their attempts to apply the legal logic of a by-gone era to the complex cases erected by modern industrialism have been pitiful. More pitiful, however, have been the results of this musty and legalistic rationalizing to the literally keen and quick-cutting situations in which injured workmen became pawns in a game of chess played by the common law jurists.

Legal Relics of the Handicraft Stage.-- Thousands of cases involving attempts on the part of injured workmen or their dependents to recover damages resulting from accidents which were sustained during their regular employment were adjudicated under a legal system ill suited to dispense justice in situations so new and so different that judges in their adherence to common law principles showed themselves utterly unable to comprehend the meaning of the complex circumstances

CHAPTER II

INADEQUACY OF COMMON LAW REMEDIES

surrounding the cases. Economists and sociologists, looking forward, anticipate changes in the material conditions under which human beings live. Jurists in their attempts to apply legal principles to cases before them for decision look back to tradition for the answer. The great doctrine of "stare decisis" upon which common law decisions are based is necessarily in opposition to the approach of the economist or sociologist. "Stare decisis" means to stand upon the decision of yesterday in deciding the case of today. Hence, we find the judges facing a new industrial era with its high speed and dangerous machinery but looking back to principles of law developed during an age when industry was in the handicraft stage. Under such conditions it is not difficult to understand the workman's contempt for the law nor his opinion as to its failure as an instrumentality of justice. One has only to read the earlier cases of industrial accidents and to dwell upon the antiquated terminology which the court used in handing down its decision to realize how steeped its jurists were in ancient legal lore, while at the same time they were utterly lacking in ability to comprehend the significant and radical changes which had taken place between employer and employee in a new industrial order.

The following case will not only serve to support the statement that the legal terminology used by the judge is a sufficient indication of his failure to recognize greatly altered circumstances, but it will also serve to show how inadequate were the antiquated common law rules in their application to the conditions of a machine age.

The facts were as follows: A workman was killed when a derrick chain which had a latent defect broke. The defendant employer had purchased the chain in good faith from a reputable dealer who had represented it to be of the best material and workmanship. The court held that the defendant was not liable. The decision of the judge is a classic example of a jurist's ability to live in a machine era, weigh and consider facts pertaining to machinery in the case before him, then to delve deeply into the legal lore of antiquity, not only coming out with an answer intended for a past economic era but expressing it in the language of that by-gone age. Note the use of the word "master" which is so suggestive of a small shop of the handicraft type. Then try to reconcile it with a steel derrick. One wonders if the judge ever made the attempt. Said the judge:

"The master is not a guarantor of the safety of machinery or implements furnished his employees and is only bound to use ordinary care, diligence and skill for the purpose of protecting them, and it is not negligence to use and employ such machinery or implements as the experience of trade and manufacture sanction as reasonably safe. A purchaser of such an article from a reputable manufacturer with representations as to its tested strength and quality of material is not responsible for hidden defects which cannot be discovered by careful external examination". *

All of which was undoubtedly good legal theory from the standpoint of the jurist and of considerable benefit to the

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* Westinghouse Electric & Manufacturing Company vs. Heimlick, 127 Fed. 92.

defendant employer, but certainly it was of little consolation to the dependents of the workman whose life had been crushed out.

It is difficult to think of a better example of the necessary replacement of common law rules by enactment of statutes than that furnished by questions arising out of industrial accident cases. When teachers of either law or economics are in need of an example with which to illustrate their lectures on changing conditions as the motivation for the enactment of new laws they turn almost instantly to an example showing the necessity for some adequate remedy to compensate the workman or his dependents for loss of life or an injury sustained while engaged in a hazardous undertaking, presumably for the benefit of society. Such an example is classic. Since it so readily suggests itself to the minds of intelligent people whose profession requires them to think in terms of social betterment, there can be little question that here the wisdom of supplanting the common or unwritten law by means of statute or written law is not to be questioned. Rather, it points to the older doctrine of the common law as a legal relic of the handicraft state of industry outliving its usefulness by many decades and working havoc on employer and employee alike in its unjust and ridiculous application to factory conditions of a machine era. Even during the handicraft stage the doctrine cited was unfair, placing unjust burdens on conscientious employers, thus giving ruthless competitors a great advantage over them.

Professor Ely says of the doctrine of Employers' Liability, which laws were enacted to prop up rather than replace the common law: "Under it not more than ten per cent of the victims of industrial accidents received any compensation, and of the

damages paid by employers the victims received on the average probably less than fifty per cent". *

This seems to be rather conclusive evidence of the inability of the common law to cope with the industrial accident situation which was becoming a greater problem every day. As the use of machinery in industry increased, the number and kind of accidents naturally increased. The skyscrapers erected might very accurately have been looked upon as steel monuments to those whose lives were taken in the interest of industrial progress. It is difficult to believe that the parents, wives, and children of Industry's dead did not look upon these same steel giants of the new era in this way and with bitter resentment.

Unjust Application to Modern Factory Conditions.--To understand more fully the unjust application of common law rules to cases arising out of industrial accidents one must of necessity examine the phases of the common law which until quite recently were applied in such cases, as well as the false premises upon which they rested.

The injured workman had chance for redress only if his injury might have been imputed to the negligence of his employer. His ability to recover damages to compensate him for his losses depended entirely upon his ability to prevail at law in a tort action against his employer for negligence. Such a process was costly, fraught with delay, and the outcome was decidedly problematical. In fact, when the employer availed

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* ELY, RICHARD T., "Outlines of Economics", p. 484.

himself of the usual defenses customarily set up, the workman had little chance of winning a verdict even after he had proven negligence. His small chance for prevailing in the suit against his employer was not in general due to an unsympathetic attitude of the court towards him. The contrary was often the case, and the defendant employer was awarded the decision even though the judge may have been personally sympathetic with the injured employee, simply because the premises upon which the legal logic was based were false.

If one understands clearly the meaning of negligence as the law defines it, it is not difficult to imagine the many and varied situations in which careful and intelligent workmen may meet with serious injury in the performance of their routine duties without any negligence on the part of their employers. Archer writes of negligence as follows: "The law imposes upon every person the duty to exercise at least ordinary care to avoid injuring others. A failure to exercise ordinary care will render a person liable in damages for negligence to any person who is injured as the proximate result of such failure. By ordinary care is meant the care that the ordinarily prudent person would exercise under similar circumstances". *

One can easily understand how the apprentice or journeyman working beside his master in the shop of the handicraft era might impute his injury to the negligence of his master in those rare cases when injury occurred. But it takes little imagination to conceive of workmen in modern industrial plants injured

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* ARCHER, GLEASON L., "The Law of Torts", p. 211.

by the score by circumstances quite beyond the control of either employer or employee at the time of the accident. Therefore, a suit for negligence instituted by a workman against an employer, while the only means of redress at one time, was certainly a poor way of attacking a problem created by the new industrialism.

Its inefficacy was increased by means of the defenses of which the employer was permitted to avail himself. Of the three customary defenses available to the employer, the so-called doctrine of assumption of risk was undoubtedly the most unfair one. Its availability was due to the fact that the labor contract was looked upon in the same light as any other contract, the risks inherent in the occupation presumably being taken for granted by both employer and employee. This conception is another example of one of the legal niceties inherited from English common law which make an excellent reading diet for the logicians of jurisprudence but which the victims of industrial tragedies found exceedingly hard to swallow. The Anglo-Saxon race has long prided itself upon its sacred right of contract, and it is upon this sacrosanct privilege that the theory of assumption of risk is built. Historically, the laborer has not always had the right to contract freely for his services. The emergence of this right was an event of no small importance in the development of principles of personal liberty. Therefore, the jurists in their efforts to preserve these principles have carried them out "ad absurdum" to the point at which we find them reacting detrimentally upon the individual for whose benefit they were intended. That this outcome was not clearly foreseen in the early decades of the machine era may

be inferred from the following statement: "During the first half of the nineteenth century the terms and conditions of employment were left almost wholly to the discretion or to the relative bargaining power of the immediately interested persons. To them was granted the power of making or breaking the relation at will. It was presumed that any relationship they chose to establish was primarily their own concern, that they were much better qualified than outsiders to determine their mutual rights and obligations, and that they would both obtain fair terms from their bargaining because they were protected by competitive forces and by equality before the law. There followed the corollary that freely made bargains of this sort would advance not only the personal interests of the immediate participants, but also the general social interest". *

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* CASSIDY, HARRY M., "The Emergence of the Free Labor Contract in England", -- The American Economic Review, Volume XVIII, No. 3, p. 201.

CHAPTER III

DEFENSES AVAILABLE TO EMPLOYER

Assumption of Risk.--The spirit of the judges was close to that described in the quotation above in reading into the law the doctrine of assumption of risk, a doctrine not unreasonable in a country in a stage of economic development in which a man might work by hand at a bench beside his master for a wage agreed upon or take up farm land in a less settled section of the country if the conditions of labor were not to his liking. It does seem, however, to be a bit far-fetched in a machine age with its factories, industrial depressions, bread lines, and hazardous occupations. To the clear thinking social scientist it reads, "Take the hazard at a questionable living wage or starve". That, of course, was the practical effect upon the workmen in the large urban centers, particularly in times of depression. If work were scarce, one could not shy away from a job simply because performing it implied his taking the risk of physical injury or loss of life. Nor financiers and industrialists could not have erected their skyscrapers and run their machine industries if labor had been unwilling to incur the physical risks inherent in the tasks.

Fellow Servant Rule.--In applying the fellow servant rule the courts again favored the employers, and decreased the workingman's chance of obtaining money damages for his injury. In fact the jurists used the doctrine of assumption of risk to prop up the newer defense known as the fellow servant rule.

To Lord Abinger, English jurist, goes the questionable honor of introducing into the common law both the "assumption of risk" and "fellow servant" defenses in the same case, Priestly vs. Fowler in 1837. But it is in reference to the latter defense that he is quoted. Says the Lord Justice: "As between the master and a servant injured, it is only demanded of the master that he shall have taken due care in employing fellow servants of ordinary skill and carefulness". *

If the above citation referred to the master of a household and his domestics, it would be a reasonable enough rule. But when the jurists apply such a precedent to a situation as greatly removed from household economics as railroad engineering, it is high time to question the application of the law.

For example, in 1841 a case occurred in this country in which a locomotive fireman was injured when the engine was derailed. The engineer with whom he was working had been guilty of negligence. The court ruled for the defendant railroad, declaring that the employee had assumed not only the risks inherent in the job but that he had also assumed the risk that a fellow employee might be negligent. ** This American precedent was based upon the decision laid down in the English case of Priestly vs. Fowler.

The manner in which the courts linked these two defenses is made very clear in the following citation. Also note how the judge attempts to make the doctrine seem fair and just by relating the risk to the amount contained in the employee's pay envel-

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* Cited by EASTMAN, CRYSTAL, "Work Accidents and the Law", pp. 173-174.

** Murray vs. the South Carolina Railroad, 36 American Decisions 268.

ope. Farwell vs. The Boston & Worcester Railroad Corporation was a case in which a switchman had failed to set a switch properly with the result that an engineer was injured in an accident caused thereby. The court said: "The general rule resulting from consideration of justice as well as of policy is that he who engages in the employment of another for the performance of specified duties and services for compensation takes upon himself the natural and ordinary risks and peril incident to the performance of such services, and, in legal presumption, the compensation is adjusted accordingly. And we are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are in the same employment. These are perils which the servant is likely to know, and against which he can as effectually guard as the master. They are perils of the service, and which can be as distinctly foreseen and provided for in the rate of compensation as any others". *

Again one finds the jurist applying the obsolete term, "master", to an artificial being in the person of a railroad corporation and "servant" to a locomotive engineer. What more evidence is needed to show how lacking the judges were in ability to comprehend the conditions of modern machine civilization?

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Contributory Negligence.--One can hardly blame them, however, for permitting the defense of contributory negligence to be raised. Such a defense is a very logical and natural one in a case where the plaintiff charges negligence. Not that it is any more correct than either of the other customary defenses when we look at the industrial accident from the more modern and socially significant point of view. But at least it was not faulty legal logic. With the industrial accident case resting upon the false premise of an imputation of negligence on the part of the employer, it was natural to expect such a defense to be raised.

Employer's Liability Laws.--Such were the harsh rules of common law, making it almost impossible for a workman to gain a verdict, to compensate him for injury. The situation was virtually the same in every state, although some attempted to soften the harsh rules of common law by the enactment of statutes known as Employer's Liability Laws. But it was close to the beginning of the twentieth century before many states had adopted these codes. They were anything but uniform, varying with the individual states. It is not difficult to see why their passage would meet with considerable opposition on the part of manufacturers, but their enactment was a very definite step leading up to the later adoption of a workmen's compensation law. Jurists themselves were beginning to recognize the unjust application of common law rules to situations previously undreamed of. The opinion of the court in the case of Driscoll vs. Allis-Chalmers Company is an interesting one from this point of view. Said the court: "If it be said that

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some of these rules are archaic and unfitted to modern conditions, I do not disagree; in fact that has been my own opinion for long. Upon reflection it seems that this could hardly be otherwise. Principles which were first laid down in the days of the small shop, few employees, simple machinery, could hardly be expected to apply with justice to the industrial conditions which now surround us. In those earlier days the laborer ordinarily knew his fellow workmen, worked with simple machinery, and ran comparatively small risk of injury. The genius of our present remarkable industrial development requires that he carry on his patient toil in company with veritable armies of fellow men, many of whom he can neither see nor know; it surrounds him with mighty and complicated machinery driven by forces beyond his control, whose relentless strength rivals that of the thunderbolt itself, and it requires him to labor day by day with faculties at highest tension in places where death lurks in ambush at his elbow, awaiting only a moment's inadvertence before it strikes." *

But, it should be noted that this opinion was not written until 1911. Furthermore, it was the opinion of a Wisconsin judge whose enlightenment upon the circumstances surrounding the case may be accounted for in some measure by the fact that this state led all others in its recognition of the principles of social justice.

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* Driscoll vs. Allis-Chalmers Company, 144 Wisconsin 451 .

Prohibitive Cost of Litigation.--The opportunity for the injured workman to obtain a favorable decision in the law courts of Connecticut or in the courts of any other state was small indeed. But when one considers the actual cost of litigation to the injured or to the dependents of the deceased, it seems surprising that the injured workman or his dependents were at all able to fight for the small chance which the law courts gave them to attain some measure of compensation for the loss of life and limb and of earning power so frequently sustained.

It is no exaggeration to state that under common law rules and even under the somewhat modified Employer's Liability Laws the cost of litigation in many cases of real distress was actually prohibitive. In other words the more necessary was the need for financial aid, the less likely was the injured party or his dependents to receive it. Although there were a great many lawyers, commonly called ambulance chasers, who were willing to take a case on a contingent fee basis, the delays incident to the adjudication of the case in court were so great that an injured workman or his dependents who did not have considerable financial backing would be unable to avail themselves of the services of even these oft-criticised members of the legal profession. Not only would the injured workman in the vast majority of cases be immediately relieved of his job and the subsequent future security that an industrial connection might afford as soon as he took legal action against his employer, but every court case was fraught with such delay that unless the workman or his family had considerable savings to which to resort in time of need or some other source of financial aid, the very

thought of litigation was hopeless. It takes little imagination to see that only in a small minority of the cases the injured employee or his dependents were in a position to battle in the courts. And those who did receive a favorable decision were small indeed to the proportion of all workmen injured.

Unfair Settlements by Negotiation.--What was the result? The only result which could be expected under such an archaic system of justice. The injured workman was compelled to permit his employer to drive a harsh bargain. He might accept a small sum in settlement of all his legal claims or take the uncertainty offered by the law courts and the privation while waiting for their judges to weigh antiquated precedents. If the injured workman's employer were insured, the employee had a much more skillful adversary with whom to contend in the opposing insurance company, skilled in the technique of intimidating workmen too poor to obtain legal counsel or too ignorant to know their rights.

Settlement by negotiation then became a common means of adjustment -- a means in which workmen exchanged arms and legs for small sums of money or jobs as night watchmen while the employers of labor became multi-millionaires and were hailed as Captains of Industry and Builders of Empires of Steel. Meanwhile, their sons and nephews trained in the university law schools which their kinsfolk endowed, sustained their industrial forebears with weighty decisions, classic in their adherence to an outworn tradition and masterly in their appropriation of the hairsplitting dialectics of the English jurists of the 18th Century.

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CHAPTER IV

EUROPEAN BACKGROUND OF WORKMEN'S COMPENSATION

A survey of the history of the Workmen's Compensation movement in Europe is pertinent to the development of the thesis at this point; for, an appreciation of the historical background of the compensation movement in Europe, where it originated, is necessary to a clear understanding of that same movement in the United States and also to the particular section of the United States to which this thesis has special application. A tendency toward social legislation of a particular type is usually world-wide. It is rarely the result of social phenomena peculiar to the locality where it may be observed to set forces in motion. These social forces sweep across the world in currents of ideas that take root in the minds of men. Thus, the student of social insurance in Connecticut not only reaches the ultimate general conclusion of the German student in the same field, but if the experience of the German nation with social insurance has been more extensive for various reasons, the student in Connecticut is influenced by the results of such study in Germany, and he wisely takes such prior and superior experience into consideration before drawing his own conclusions. Therefore, since social forces are world-wide in their movement, and in no respect as provincial as the people whom they affect, the legislative machinery set up to regulate and control them should be designed and installed only after those responsible for putting

CHAPTER II

EUROPEAN BACKGROUND OF GOODNOW'S CONCEPTION

such legislative machinery in motion have had the time and opportunity to study what other nations and states have done. In a later section of the thesis we shall see that the various committees and experts dealing with the Workmen's Compensation problem in Connecticut resorted to such an examination of the historical development of the movement as that which we are about to make.

A second reason for delving into the history of European experience with Workmen's Compensation concerns itself with our obtaining a sufficient grasp of the movement to survey the development of Workmen's Compensation in Connecticut with a sense of critical appraisal. For example, is the Connecticut legislation regarding this issue as efficacious in accomplishing the purpose for which its adherents strove as it might be? What lessons has Connecticut learned from the greater experience of Europe? What effect has this experience had in shaping the provisions of the Connecticut Act? A further appraisal of Connecticut's history may be made in connection with the attitude which caused her legislators to delay this form of social legislation so many years after Europe had provided a wealth of experience and amassed a weighty body of evidence in favor of the principle. It must be stated in passing, however, that Connecticut compared favorably with other states in our country; but all were woefully delinquent in according recognition to this type of social legislation.

Germany.--The first nation to adopt a workmen's compensation law was Germany and quite logically the compensation principle has been carried to its greatest development in that country. The Reichstag passed a compensation bill on July 6, 1884, which became the foundation for all subsequent legislation in that country and a model upon which later legislation of a similar nature in other countries adopting the principle was based.

In Germany, as in many other countries, the compensation code was preceded by a gradual abrogation of common law principles and the enactment of a Liability Act in 1871. But a movement for compulsory compensation insurance developed and later gained considerable headway. "Bismarck, who had originally opposed the idea, finally adopted it with the purpose both of taking from the socialists some of their ammunition and of convincing the people of the beneficence of the State as it then existed." *

Writing on the same phase of the subject Rhodes says: "While upon a superficial examination it may appear that the adoption of the social insurance system of Germany may be attributed to the genius and constructive statesmanship of Bismarck, a deeper study of the subject will show that for many years forces had been at work in this direction, that the adoption of the system was a consummation, and that the work of Bismarck was that of direction rather than that of creation. The system is essentially socialistic in its nature, and so it is the consum-

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* BLANCHARD, R. H., "Liability and Compensation Insurance", p. 84

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* BLANCHARD, R. E., "Liability and Compensation Insurance", p. 85

mation of the ideas of the socialist whose influence has been so strong in Germany. While the name of Karl Marx is more intimately associated with the mention of German socialism than that of any of the other leaders, many of the ideas which constitute the basis of the socialistic propaganda are those of other leaders, and this idea of the protection of individuals and their families against the consequences of crushing misfortunes is attributed to LaSalle rather than to Karl Marx. He recognized the function of the government to protect the individual against force * and fraud, but in addition to this he contended that it was the function and the duty of government to protect against other misfortunes the consequences of which might be just as real." **

The workmen's compensation insurance in Germany is merely a part of a comprehensive social insurance system which thoroughly protects the German working people from many types of adversity. Sickness, as well as accident insurance, is compulsory. In the case of sickness insurance the employee contributes two-thirds to the fund while the employer contributes only one-third. This compulsory sickness insurance is used to supplement the accident insurance in the respect that during the first thirteen weeks of his illness, whether it was caused by an industrial accident or not, the German workman is covered by the sickness fund; consequently, there is no waiting period. Mutual associations are the only form of insurer available. In Germany they have shown great efficiency under a compulsory insurance system.

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* One might ask if an injury is not at least a case of "force".

** RHODES, J. E., "Workmen's Compensation", p. 44

Norway.--Ten years after the German compensation law went into effect Norway passed an act making Workmen's Compensation insurance not only compulsory but giving the state the monopoly on the insurance required under the Act. The Act, which has since been amended several times to make its influence more widespread, went into effect July 1, 1895. * While the Norwegian government studied the experience of this form of insurance in Germany and Austria and profited by that experience, it did not stop at the same limits which it had observed in Germany and Austria. The chief improvement Norway made when adapting the experience of Germany and Austria to its own problem was to put its indemnities on a reserve or capitalized value basis rather than on an assessment basis. This means that when an employee in Norway is permanently disabled, funds sufficient to provide an annuity are immediately provided by the state insurance department, while in Germany in a similar situation the annual payments due the permanently disabled workman would be met by assessment year by year as he required them. The state monopoly in Norway makes this special assurance to the disabled possible while in Germany the influence of the employers in the system permits them to elect the annual assessment alternative which they favor because it gives them control of slightly more capital for business operations, payments being provided for only when actually due.

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* FRANKEL and DAWSON, "Workingmen's Insurance in Europe", p. 50

Finland.--In 1895 Finland enacted a compulsory Workmen's Compensation law, but the state neither monopolized nor competed with private corporation or mutual association of employers in insuring the indemnity. The Finnish law, while one of the first and for that reason worthy of distinction, is poor in some respects. Its two chief weaknesses in the light of the compensation principle are that it permits the employer to invoke gross negligence as a defense, thus reverting the situation to one of culpability, and providing the insurance companies with a defense capable of considerable extension under the skillful manipulation of expert tort lawyers. Any reversion to common law principles in the industrial accident situation is to be regretted in the light of modern social theory. The second weakness in the Finnish law is the fact that it makes no provision for medical aid. Connecticut on the contrary is to be commended in its adherence to the principle that medical aid should be unlimited. The employer in Finland is further relieved of all liability by insuring in a mutual association. * These are the high points in the Finnish experience of interest to us. It is noteworthy that Finland, a country lacking in natural resources and in no sense an industrial nation, antedated the average American state in its recognition of the compensation principle by twenty years.

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* FRANKEL and DAWSON, "Workmen's Insurance in Europe", p. 19

Great Britain.--Blanchard feels that in Great Britain ideas of individualism and freedom of contract have delayed the enactment of statutes dealing with employer's liability and workmen's compensation. He is also of the opinion that these same ideas have restricted the scope of such laws as have been enacted. Prior to 1880 recovery for injuries sustained in injury was governed by common law rules of negligence which according to this same writer went to such length in the protection of the employer that it was practically impossible for a workman to secure damages.

The Employers' Liability Act of 1880 was the first legislative measure to counteract the older rules of common law. When certain kinds of negligence could be proved this Act considerably modified the Fellow Servant Rule and the doctrine of assumption of risk, but it left untouched the defense of contributory negligence. Realizing the inadequacy of the Act of 1880, Mr. Asquith introduced a bill in Parliament in 1893 which attempted to add to the features of the employers' liability law, but it was defeated.

In 1897 The Workmen's Compensation Act was enacted. It became the first law of its kind in English speaking countries. The statement that "sound economic doctrine requires that the employer shall take all the ordinary and extraordinary risks involved in the carrying on of his industry" urged in support of the bill was quite contrary to the theory laid down in Priestly vs. Fowler. *

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C H A P T E R V

EUROPEAN BACKGROUND OF WORKMEN'S COMPENSATION

Denmark.--On January 7, 1898, Denmark passed a Workmen's Compensation law applying "to industries of all sorts, especially to those conducted in factories, those employing steam, electricity, wired and water power; to ships and oversea navigation, railroads and tramways, and the larger building trades". * Denmark does not make compensation insurance compulsory; therefore, there is no obligation on the part of the employer to insure. As a matter of fact, slightly more than ninety-one per cent of all industrial accident cases settled before the state council in 1906 were cases in which the employers had insurance coverage. The insurer in Denmark may be either a private corporation or an employer's mutual association. Mutual companies have the larger share of the patronage, and, according to Frankel and Dawson ** were increasing in popularity as early as 1906. Incidentally, this was one year prior to the appointment of the first committee by the Governor of the State of Connecticut to investigate the matter of industrial accidents.

While the Danish system is elective as far as the compulsory insurance feature is concerned, and while the state does not compete for the insurance business, there are several features in the Danish system worthy of note and probably valuable to the student or legislator engaged in an evaluation of

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* FRANKEL and DAWSON, "Workingmen's Insurance in Europe", p. 55

** Idem.

CHAPTER V

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** Idem.

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the features of the compensation system of his own state or country.

The outstanding feature of the Danish system is the special Workingmen's Insurance Council, called the "Arbejder Forsikrings Raad". The function of the Raad is "chiefly as a department for the adjustment of claims; it determines whether the employer is liable, the nature and degree of the impairment of earning power of the workman, and the amount of indemnity payable. Every adjustment must be made through it, whether the employer is liable or not, and its decisions are final.* There may be an appeal from the decision of the original referees to the chief of the department, but none beyond that, except to the courts on the construction of the statute. By this means, private companies are spared the expense of adjustments, and have only to pay the claims for which the state department decides they are liable. The plan has been satisfactory to workmen and employers, and singularly, also to the insurance companies". ** The latter fact should be of particular interest to the student of Workmen's Compensation in Connecticut; for no less an authority than a member of the legislative committee which investigated the matter in Connecticut and helped draft the Act admitted to the writer during a personal interview that this question of the form of insurance became the main issue before the final passage of the bill. The writer further understands that after fifteen

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* The italics are my own.

** FRANKEL and DAWSON, "Workingmen's Insurance in Europe", p. 55-56

years of experience with this form of insurance the private insurance corporations, in some cases, do not consider workmen's compensation insurance a highly profitable type of contract. To what extent the cost of maintaining this division of their organization might be decreased by reducing the cost of adjustments under a system of state supervision similar to that existing in Denmark might constitute a profitable subject for study on the part of insurance corporations.

The Danish system provides an excellent example of private enterprise under government supervision, a form of control which capitalistic enterprise might well look to as a guarantor of its future existence, and as a sane alternative to outright government ownership such as is found in the socialistic state. It should be noted that the Danish plan proved satisfactory to all interested parties.

There are four departments in the Raad differentiated according to broad lines of occupational activity. Each department has seven directors, two representing employers, two employees, and three who are appointed by the king, the appointees of the king being the same for all four departments.

The employee has the right to recourse against his employer in the common law courts without the consent of the Raad, or to arbitration before the Raad. If the employee accepts the award of the Raad he loses his common law right to sue, but if he sues at common law and loses he has no redress under the statute, unless he had previously obtained the consent of the Raad to bring suit. This consent, however,

is rarely granted unless the employer had been guilty of gross criminal negligence.

The Danish system has been treated at considerable length because it is felt it offers an opportunity for study, which is particularly valuable to the student of the Connecticut system of compensation, and although enacted in 1898 it seems to embody in many respects features more applicable today in the United States than ever before.

France.--The French law, also enacted in 1898, is worthy of some consideration, for it contains a provision somewhat unique yet not unworthy of study with a view to its adoption in Connecticut or in any other of our American systems. The French compensation law resembles that of Denmark in the respect that there is no compulsion to insure. In brief the history of its evolution is quite similar to that in many states. The expression that history repeats itself is well borne out by a study of the compensation system of various states. The following quotation from Frankel and Dawson, summarizing the French experience has a rather familiar ring to the student of comparative systems of workingmen's compensation. "The law which holds the employer liable and provides for voluntary insurance was a compromise between the demands of the Chamber of Deputies for compulsory insurance and the oppositions of the conservative Senate. The result is a mean between the English and the Italian laws. Like the English law, it establishes strict liability of the individual employer, but it excels in requiring greater security for the payment of every possible claim.

Unlike the Italian, however, it does not require the employer to insure". *

Some points significant of comparison are the following: The original French law enacted in 1898 applied to workmen employed in all industrial establishments without regard to the number employed in any one establishment. The Connecticut Act, on the other hand, specifies that the statute does not apply to employers of less than five workmen. There was considerable discussion of this point during the public hearings before the legislative committee in 1913. Even Professor Clyde Fisher of Wesleyan University, one of the most ardent champions of workmen's compensation in Connecticut, thought that the limit must be placed somewhere regarding the number of employees in any establishment in determining whether or not any employer was within the statute. When one studies the stenographic reports of these hearings he gets the distinct impression that this limitation was framed as a concession to the farmers of Connecticut, the majority of whom would regularly employ less than five hands. Professor Fisher, himself, states that a limit of four would be more inclusive and therefore better than five, but states, presumably as a concession to probable opponents of the law in agricultural circles, that the limit must be placed somewhere. In Connecticut the influence of the farm element would not be an inconsiderable one. The French law of 1898 did not, of course, cover agricultural laborers. In fact, agricultural workers are still excluded with the exception of

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* FRANKEL and DAWSON, "Workingmen's Insurance in Europe", p. 64

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persons engaged in the use of agricultural machines or with motive power used to drive them. This latter group were totally unprotected until an amendment was passed on June 30, 1899, providing for their inclusion under circumstances described above.

On April 12, 1906, a second and obviously more important amendment was that which extended the benefits of the Act to employees of mercantile establishments, many of whom are often subject to greater dangers than many employers of the industrial group, notably truck drivers and delivery men in the larger French cities.

There are many interesting features of the French compensation law which one passes over reluctantly, for the writer is of the distinct opinion that the student of Workmen's Compensation cannot have too broad an outlook on this subject, no matter how limited, territorially, the scope of his study must necessarily be. The alleviation of human suffering and the betterment of mankind know no boundaries. Industrial accidents the world over have in common the loss of members of the human body and disablement, accompanied by suffering and privation. Students of the subject cannot go too far afield if the study of the treatment of these problems abroad may possibly contribute one idea calculated to relieve human suffering at home.

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C H A P T E R V I

STRUGGLE FOR WORKMEN'S COMPENSATION IN CONNECTICUT

The experience of Connecticut with workmen's compensation was very similar to that of many other states. In Connecticut as elsewhere there was a long period characterized by an unjust application of common law rules of negligence to the industrial accident case. There followed a period of agitation on the part of groups particularly affected, legislative investigations and public hearings, then finally the framing of a compensation code and the enactment of that code into a chapter of the laws of Connecticut.

Common Law Period.--During the second quarter of the nineteenth century the Connecticut courts heard many a case arising out of the industrial accident, and in a manner similar to that employed in the courts of other states these cases were decided upon the theory of "stare decisis". One finds, then, the jurists of Connecticut referring to the English case of Priestly vs. Fowler (3 Mes. and Wels. 1) decided in 1837, to Murray vs. the South Carolina Railroad Company, (1 McMullan 335) the American precedent of 1841, to Farwell vs. the Boston and Worcester Railway Corporation (4 Metcalf 49) of 1842, and then returning to England for Hutchinson vs. York N. & B. Rwy. Co. of 1850 (15 Exch. 343) until the Connecticut jurists could point to a precedent of their own. Such an opportunity presented itself in 1867 when the Supreme Court of Errors heard an appeal in Burke vs. Norwich and Worcester Railroad Company (34 Conn. 474).

Let it be said to the credit of Justice McCurdy, however, who dared not flaunt the doctrine of "stare decisis", that although he adopted the Fellow Servant Rule in this case, thus formally making that rule a part of the common law doctrine of Connecticut, he did so "not without some hesitation, and since that time it has been applied by our courts", the judge continues, "eliciting, however, from time to time occasional remarks by some judges as to its injustice".

Justice McCurdy also questions the justness of the doctrine of assumption of risk, which we have seen to be so often coupled with the Fellow Servant Rule. In the same case this jurist says: "The justness of this reasoning has been questioned by high judicial authority. (Little Miami Railroad Company vs. Stevens, 20 Ohio 435) However, plausible may be the theory it is very doubtful whether, in fact, a spinner in a factory or a fireman on a railroad ever made an examination into the condition of the machinery, the mode of conducting the business, or the character and habits of the operatives, for the purpose of ascertaining the extent of his risk, as an element in calculating the proper amount of his wages".

In Darrigan vs. N. Y. & N. E. R. R. Co. (52 Conn. 285) the application of the Fellow Servant Rule was somewhat modified, but it had been made a part of the law, the damage was done, when the Fellow Servant Rule was written into the Connecticut law in Burke vs. the Norwich and Worcester Railroad Company in 1867. This doctrine became more strongly entrenched as each succeeding decision, going back to Priestly vs. Fowler, added

the weight of authority. As late as 1907 by which time ten European countries, as well as New Zealand and South Australia, had enacted workmen's compensation acts, the Fellow Servant Rule was so strongly embedded in the common law in Connecticut that the committee appointed by the governor to investigate and report regarding legislation to regulate the liability of employers in preparing its conclusions said: "In the opinion of your committee it is not wise or advisable to abrogate in toto the rule of Fellow Servant, without in any manner limiting the amounts which may be recovered against the employer on account of injuries which he may suffer through the negligence of a co-employee. Your committee does not therefore recommend for your favorable consideration House Bill No. 39, which provides for the abrogation of the rule of Fellow Servant". *

Governor's Committee of 1907.--By Senate Joint Resolution, approved on February 27, 1907, The Connecticut General Assembly authorized the governor to appoint a committee of three persons, one to be an employer, one a representative of labor, one a lawyer to investigate the question of the liability of employers for industrial accidents. On March 4, 1907, Governor Rollin S. Woodruff appointed Edward M. Day, E. Allen Moore, and Charles J. Donahue, to the committee. None of the members of the committee were members of The General Assembly. The time to complete the study was extended by the legislature

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* STATE OF CONNECTICUT - PUBLIC DOCUMENTS (S. J. R. No. 228, Session 1907) p. 28

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* STATE OF CONNECTICUT - PUBLIC DOCUMENTS (R. S. R. No. 259, Session 1907) p. 29

from April 2 to May 20, 1907, upon the request of the committee. The work of the committee is well described in its report to the General Assembly: "Immediately upon organizing as a committee, after notice was given to all interested in the question of legislation affecting the liability of employers to employees, public hearings were held, and your committee has endeavored in every way so to accommodate itself to the convenience of those desiring to be heard as to get the fullest possible discussion of this question.

"No bills for proposed legislation were presented to your committee, but your committee assigned for hearings three bills introduced to your Assembly which were referred to the Judiciary Committee. Of these three bills one provided in substance for the abrogation of what is known as the Fellow Servant Rule, and the other two bills provided in substance for acts known as Employers' Liability Acts. These three bills served as the basis for a general discussion before your committee of the important question of legislation affecting the liability of employers to employees. Not only its legal phases were considered before your committee, but the question was treated to some extent from its economic and social aspects; and it may be said at once that those advocating some legislation proposed first, either the abrogation of what is known as the Fellow Servant Rule; or, second, the enactment of a law similar to what is generally known as an Employers' Liability Act; or, third, legislation carrying out in principle what are known in other countries as Workmen's Compensation Acts. Those in favor of these proposed changes in the

law of our State were fully heard by your committee, while objections to each of them were pointed out and discussed by those who thought it was hardly possible to enact a law affecting the relations of employer to employee which would be fairer and more just to all concerned than the law of Connecticut as it now stands.

"The members of your committee not only listened to the discussions of these questions at the public hearings, but have investigated the subject themselves so far as the limited amount of time would allow them, endeavoring in every way to so inform themselves as to be able to act intelligently and wisely in regard to this important matter."

The quotation above is taken from a "Report submitted to the General Assembly by the committee appointed to investigate and report regarding legislation to regulate the liability of employers", a twenty-nine page pamphlet, which presents the results of the study made by this committee. In this report the committee reviews the history of the Fellow Servant Rule, Employers' Liability Acts, and Workingmen's Compensation Acts. The attitude taken in the report is quite timid and conservative. After admitting that: "It is significant that Norway, Switzerland, Finland, Hungary, France, Italy, Holland, Denmark, Spain, New Zealand, and South Austria have gone on from treating the subject on the ground of legal liability to the enactment of workmen's compensation acts largely similar to the Workmen's Compensation Act of Germany" at the very end of the report the committee states: "Whether

such legislation for Connecticut is practical and sensible at the present time, your committee does not undertake to say".

The committee, however, would consider a further study of the subject advisable. Meanwhile, the learned judges defeat the just claims of dependents for compensation, stating that the "Master" in the guise of a railroad corporation is not liable for the acts committed by a fellow servant, the fellow servant being a signal-man some miles from the scene of the accident.

Rubinow summarizes the work of the Connecticut committee very tersely: "The committee made a brief though fairly clear study of some compensation laws, admitting willingly all the virtues of the system, but could not agree to recommend a bill to that effect, mainly because of fear of interstate competition". *

The Compensation Movement in Other States.--The first real Compensation Act in the United States was passed by Congress for the protection of some government employees on May 30, 1908. It was very limited in its application, but it was the first effective compensation law in the United States. ** In the several states compensation acts were frequently defeated on questions of constitutionality as the following quotation will show: "The first American Compensation Act was passed in Maryland in 1902. It applied to only a few occupations and was declared unconstitutional in 1904, upon the

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* RUBINOW, I. M., "Social Insurance", p. 159

** Idem

grounds that it denied the right of trial by jury, and conferred judicial functions upon an executive officer. Montana adopted a Compensation Act in 1909, which was declared by its Supreme Court to be valid in its essential features, but unconstitutional upon a minor ground. Maryland in 1910 and New York in 1911 enacted a general compulsory law for hazardous occupations, the latter being declared unconstitutional in the celebrated case of Ives vs. South Buffalo R. Co. (201 N. Y. 271, 94 N. E. 431). A constitutional amendment was promptly passed in New York, under which a new statute has been enacted and held valid. The decision in the Ives case had the effect of turning the trend of compensation legislation for a time from compulsory to elective laws." *

Connecticut Committees of 1911 and 1913.--A nationwide interest in the compensation movement developed rapidly. Labor associations, insurance companies, and in some instances manufacturers seeking a more stable type of redress than that afforded by the law courts which sometimes released them from all liability but at other times drove them into bankruptcy, agitated for legislation of this character. In 1911 the Governor of Connecticut appointed a committee, without legislative authority, to study the question of workmen's compensation, but the results were no more permanent than those of the committee of 1907.

However, the committee appointed in 1913 after many spirited public hearings in important centers in the state

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* PILLSBURY, WARREN H., "Employers' Liability and Workmen's Compensation" - Modern American Law Series - pp. 24-25

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drafted a Compensation Act which was adopted in 1913 as Chapter 138 of the Public Acts of that year. The law became effective as of January 1, 1914. It has been amended on various occasions since its adoption, generally attaining greater effectiveness with each succeeding amendment and as the experience of the commissioners accumulates. The present text of the Workmen's Compensation Act appears in Chapter 280 of the "General Statutes of Connecticut", Revision of 1930, as amended by Chapter 9 and Chapter 132 of the Public Acts of 1931.

Opposition to the Act.--Although the Workmen's Compensation Act was passed in 1913, its passage was not secured without great opposition on the part of many industrialists whose comprehension of social justice was about as small as their altruistic tendencies. The Workmen's Compensation Act has matured in the Connecticut law for over twenty-one years, but many of these same individuals have no more conception of its meaning and purpose than their grandfathers in 1867. Furthermore, the writer has information from authoritative sources that the younger element among this group, many of whom were not long out of the cradle when the compensation act became a law in Connecticut, have not ceased to prattle and are among its most bitter opponents. The opposition, of course, is of a sub-rosa nature, taking the form of lobbying to invalidate many of the provisions of the Act by stifling appropriations for its adequate enforcement.

P A R T T W O

PRINCIPLES OF COMPENSATION

DEDUCED FROM

THE CONNECTICUT ACT

PART TWO

PRINCIPLES OF CONSERVATION

DERIVED FROM

THE CONNECTICUT ACT

CHAPTER VII

EMPLOYER ASSUMPTION OF LIABILITY

The chief distinction, of course, between the spirit and letter of the common law and Employer's Liability laws, on the one hand, and Workmen's Compensation, on the other, is the elimination of a theory of culpability. Who was to blame? is not the point at issue when one views the industrial accident from the newer angle taken in Workmen's Compensation. Culpability might be difficult to establish under modern conditions of machine enterprise, but the theory behind Workmen's Compensation eliminates this type of inquiry. In its place it simply asks, "Was the injury sustained out of and in the course of one's regular employment?" If the answer is in the affirmative, then the injury is considered to be a compensable one.

Economic Principles Involved.--The reason for this stand on the part of the advocates and interpreters of Workmen's Compensation is based upon economic and sociological theories, rather than upon rules of law. It is not necessary to determine who was to blame, but merely to ascertain if the injury occurred in any task incident to employment in an occupation presumably of benefit to society. The fact that society demands and uses the products and services, the production of which leaves its trains of maimed, crippled, and dead along the Trail of Progress is sufficient reason for compensating the unfortunate victims who have fallen by the way. The cost of their disabilities is very properly a part of the

CHAPTER VII

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cost of the goods or services produced, and as such should be paid for by those who enjoy the benefits of the injured workman's labor. This cost, of course, is actually reflected in the price of the goods which the consumer pays. The employer can readily pass it on to insurance companies or state funds by the payment of a premium which is only a small fraction of the cost of all articles. The actual percentage of such premiums in Connecticut has been estimated at from one to two per cent of the total production cost.

The acceptance of such a theory now embodied in the Workmen's Compensation Act in Connecticut was no overnight job. It was not an easy task in many of our American states, but it did become a fact, in spite of opposition. Even now the writer has been assured from official sources that many of the manufacturers feel that they have been forced to swallow a bitter pill. Secretaries of manufacturers' associations actually receive both cash and enthusiastic applause for oratorical efforts which characterize this laudable piece of just and humanitarian legislation as an unjust law in which the manufacturer is compelled to pay the cost of accidents which he had no part in causing. Yet, just a few years ago these same ice-water orators referred to any and all members of the German race as uncouth barbarians who were destroying the fountain heads of civilization, when as a matter of fact Germany had accepted humane legislation of this character as early as 1884, just thirty years before the law went into effect in Connecticut.

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Election of Manner of Liability Under Four Main Parts of Act.--Even at that time the efforts of the legislators might have been brushed aside by the Supreme Court of Errors if the committee that drafted the law had not been clever enough to prepare the text in a manner calculated to avoid the pitfalls encountered in several other states. The question of constitutionability was avoided by preparing a so-called elective compensation law. As a matter of fact the law leaves the employer very little to elect. He may choose to become liable either under "Part A" styled "Employer's Liability" or under "Part B" headed "Workmen's Compensation". While he is given the freedom of an apparent choice, and, therefore, it is legalistically reasoned that since he is free to make up his own mind, he is not being deprived of any of his constitutional rights, actually this is merely a clever way of forcing a piece of social legislation without stumbling across vague constitutional objections. As we shall presently see the law in effect says to the employer, "Accept Workmen's Compensation (Part B) or else -----". For example, in "Part A", Section 5224 reads:

"Common-law Defenses Abolished.--In an action to recover damages for personal injury sustained by an employee arising out of and in the course of his employment, or for death resulting from injury so sustained, it shall not be a defense: (a) that the injured employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the injured employee had assumed the risk of the injury". *

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* The Workmen's Compensation Act as Amended in 1931, Section 5224.

Election of Manner of Liability Under Four Main Parts of Act.--Even at that time the efforts of the legislature might have been brushed aside by the Supreme Court of Ohio if the committee that drafted the law had not been clever enough to prepare the text in a manner calculated to avoid the pitfalls encountered in several other states. The question of constitutionality was evaded by preparing a so-called elective compensation law. As a matter of fact the law leaves the employer very little to elect. He may choose to become liable either under "Part A" styled "Employer's Liability" or under "Part B" headed "Workmen's Compensation". While he is given the freedom of an apparent choice, and, therefore, it is legalistically reasoned that since he is free to make up his own mind, he is not being deprived of any of his constitutional rights, actually this is merely a clever way of forcing a piece of social legislation without stumbling across vague constitutional objections. As we shall presently see the law in effect says to the employer, "Accept Workmen's Compensation (Part B) or else -----". For example, in "Part A", Section 9234 reads:

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* The Workmen's Compensation Act as Amended in 1931. Section 9234.

It is quite apparent that the text of Section 5224 of the Act immediately deprives the employer of the common law defenses which previously stood him in such good stead. The law simply states that the injured employee cannot be considered to have been negligent, nor can his fellow employee be considered to have been negligent, nor can it be inferred that the employee assumed risks inherent to the occupation. Section 5224 abolishes all these common law defenses in just about as many strokes of the pen as it takes to write the text of this section. Now, in Section 5225 the law, after exempting certain groups of employees continues, "---------- nor shall the same provisions (those contained in Section 5224) apply to actions against any employer who shall have accepted "Part B" of this chapter in the manner hereinafter prescribed". *

The exemptions mentioned above applied to any employers having regularly less than five employees; to employees of outworkers; and to employers of casual employees. It takes little imagination to see that there was little in the way of free election in the text to employers to whom its provision applied. As a matter of fact, if it had not been for the provisions of "Part C" and "Part D", which provided for the formation of mutual association of employers along lines followed in Germany to undertake to insure risks placed upon them in "Part B" or for the right to insure their liability in recognized stock companies, it is questionable whether the

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law could have been maintained in the face of very evident arguments questioning its constitutionability. When one reads "Part C", Section 5283, it can easily be seen that the only real compulsion placed upon the employer coming within the Act is compulsion to insure. An argument regarding the constitutionability of the law viewed from this angle should be considered as valid as a defense of a law in Massachusetts which makes the carrying of personal injury insurance compulsory on the part of the automobile owner. Surely, the industrialist when he maintains foundries, machine shops, and railroads is playing with machinery equally as threatening to the personal safety of those about him as is the automobile owner.

C H A P T E R V I I I

EXTENT OF LIABILITY UNDER THE ACT

Types of Employment Covered.-- Every employer of five or more employees is presumed to accept "Part B" of the Workmen's Compensation Act unless he elects to become liable under the Employers' Liability rules specified in "Part A". Section 5223 defines an employee as follows: " 'Employee' shall mean any person who has entered into or works under any contract of service or apprenticeship with an employer, whether such contract contemplated the performance of duties within or without the state, and shall also include any salaried officer or paid member of any police department or fire department of any municipal corporation in the state, irrespective of the manner in which he is appointed or employed, -- -------".

Extra-territoriality and Interstate Commerce.--It will be observed that Section 5223 states that an injured employee working outside the State of Connecticut under an agreement made in Connecticut is entitled to compensation according to the laws of that state. This involves the troublesome question of extra-territoriality, the rules of which vary greatly in each state. Extra-territoriality, however, is to be distinguished from interstate commerce; for, while a contract of employment made in Connecticut to perform work outside that state is an example of extra-territoriality, an employee of a railroad

engaged in interstate commerce would not be covered by the Connecticut Act even though his work never took him out of the state. Section 5262 is very clear on this point. The text is as follows: "This chapter shall not affect the liability of employers to employees engaged in interstate or foreign commerce, for death or injury, in case the laws of the United States provide for compensation or for liability for such death or injury." The law embodied in this brief section has been the basis of considerable controversy regarding the question as to whether or not the employee's rights were covered by the federal act or by the Connecticut Act. For example, in the case of Sullivan vs. the New York, New Haven and Hartford Railroad (105 Conn. 122; 134 Atlantic 795; 7 Conn. Comp. Dec. II - 15) the court attempted to determine if the plaintiff at the time of the accident was engaged in interstate transportation or in work so closely related to it as to be practically a part of it. This the court decided is the proper test for determining the matter. Again in Moran vs. the New York, New Haven & Hartford Railroad (109 Conn. 94; 145 Atlantic 567; 8 Conn. Comp. Dec. II - 00) the court declared that an employee who was engaged in both classes of commerce at the time of his injury, or in work incident to both, must find his remedy in federal law.

Exceptions.--An employer of less than five regular employees does not regularly come within the Connecticut Compensation Act; consequently if such an employer does not elect to accept "Part B" of the Act the provisions of Section 5224

do not apply and in an action for personal injury sustained by one of his employees such employer would not be deprived of his common law defenses. However, an employer of less than five employees may accept "Part B" of the Act and thus be relieved of the fear of damage suits at common law. Employers of casual workers are also similarly exempt as are the employers of outworkers. A casual worker is defined in Section 5223 as "one whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business". A waiter hired by a caterer for one day was held to be a casual employee. The same section of the Act referring to an outworker reads: " 'Outworker' shall mean any person to whom articles or material are given to be treated in any way on premises not under the control or management of the person who gave them out". Prior to the adoption of the Act and during the course of public hearings before the judiciary committee of the legislature the question as to the number of employees which an employer might have before he became subject to the compensation laws was frequently debated. Professor Clyde Fisher of Wesleyan University seems to have been prominent as an expert on social insurance at these hearings. In answer to the question regarding the minimum number of employees which would bring an employer within the provisions of the Act, he answered that the minimum would have to be set somewhere, the lower the better, but he concluded that five employees was a reasonable minimum. It is the opinion of the writer that this particular exemption feature was a concession to the farmers of Connecticut who

frequently employed less than five laborers in the tobacco fields on whom they were not willing to pay compensation insurance premiums. Some compensation laws specifically exempt agricultural workers, though it is difficult to see any reason in such exemption when one considers the amount of dangerous agricultural machinery now in use. The Connecticut law, however, gets around the opposition which agricultural interests might create by exempting employers of less than five.

Compensation for Fatal Injuries.--The Connecticut Act uses the word "injury" in preference to "accident". An injury need not be purely accidental to be a compensable injury; it may be the result of an occupational disease. Occupational diseases as well as accidents frequently result in death to the workman. Compensation, therefore, is paid on account of death resulting from an accident or an occupational disease within two years from the date of the accident or the first manifestation of a symptom of the occupational disease. The Connecticut Act provides for burial expenses amounting to two hundred dollars, which is a more liberal sum than that which is paid for the same purpose in many of the other states. Compensation equal to one-half of the average weekly earnings of the deceased at the time of his injury is paid to his dependents for a period of three hundred and twelve weeks. The minimum amount payable weekly is five dollars and the maximum amount so payable is twenty-one dollars.

Compensation for Total Incapacity.--An injured employee who is totally incapacitated is entitled to compensation amounting to one-half of his average weekly earnings at the time of

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the injury during the period of total incapacity; but if the employee is totally incapacitated for life he shall not receive compensation for more than five hundred and twenty weeks. The minimum and the maximum weekly compensation payments are the same as those for fatality, five dollars and twenty-one dollars, respectively.

Section 5236 considers the following-described injuries as causing total incapacity:

(a) Total and permanent loss of sight in both eyes, or the reduction to one-tenth or less of normal vision with glasses.

(b) The loss of both feet at or above the ankle.

(c) The loss of both hands at or above the wrist.

(d) The loss of one foot at or above the ankle and one hand at or above the wrist.

(e) Any injury resulting in permanent and complete paralysis of the legs or arms or of one leg and one arm.

(f) Any injury resulting in incurable imbecility or insanity.

The Connecticut Act, then, gives the injured employee who is totally incapacitated for life one-half of his average earnings for a period of ten years. Unquestionably this is very much more than the average victim of the industrial tragedy would have received under the archaic rules of common law; but what becomes of this poor unfortunate after the ten years during which he received compensation have expired? This is one of the many questions which the advocates of a complete system of social insurance must answer in the very near future.

Compensation for Partial Incapacity.--Payment for partial incapacity is made in accordance with a scale based upon the table of benefits given in Appendix B. The same principle which is employed in connection with compensation payments for a fatality or for total incapacity is also used here: One-half the average weekly earnings, with a minimum of five dollars a week and a maximum of twenty-one dollars a week. There is difference, however, when an injured employee is able to return to work at any time before the end of the period for which compensation is payable, he is to receive compensation equal to half of the difference between his average weekly earnings before the injury and the amount he is able to earn thereafter. In the table in Appendix B the writer has attempted to show the actual cash indemnity for various injuries, giving both the maximum and the minimum in every case. A serious consideration of the actual amount of benefit which the worker may derive from the sums given in this table and the permanent physical detriment which he must sustain for life will provide the serious student of social problems with considerable food for thought.

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C H A P T E R I X

RESPONSIBILITIES OF EMPLOYEES UNDER THE ACT

The employee as well as the employer has very definite responsibilities under the Connecticut Workmen's Compensation Act. If he is to be the recipient of the benefits which the Act provide for him in case of distress he must comply with certain minimum regulations set forth in the law. The two chief requisites with which he must comply are: first, to give notice to his employer of the injury received; and secondly, to submit to any reasonable requests which his employer or his employer's insurer may make regarding physical examinations.

Notice of Injury.--Regarding the primary responsibility of the employee to give notice to his employer of the injury sustained the Connecticut Statute states: "Any employee who shall have sustained an injury in the course of his employment shall forthwith notify his employer, or some person representing him, of such injury; and, on his failure to give such notice, the commissioner may reduce the award of compensation proportionately to any prejudice which he shall find the employer has sustained by reason of such failure; but the burden of proof with respect to such prejudice shall rest upon the employer". *

The language of the Act is quite clear in the part of

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* The Workmen's Compensation Act as Amended in 1931, Section 5232.

CHAPTER IX

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* The Workmen's Compensation Act as Amended in 1931, Section 5202.

Section 5232 which is quoted above. Yet a number of cases went to the Supreme Court of Errors on an appeal from the interpretation of the law embodied therein. In Hall vs. La Courcier (93 Conn. 1; 104 Atlantic 348; 2 Conn. Comp. Dec. II - 510) the court ruled that when an employee failed to give the requisite notice to his employer because he considered medical aid to be unnecessary he did not lose his rights.

It is not necessary that notice be given in writing, nor does it seem that such a formal requirement is contemplated by the wording of Section 5232. This point, however, was contested until the Supreme Court of Errors in the case of Simmons vs. Holcomb (98 Conn. 776; 120 Atlantic 510; 5 Conn. Comp. Dec. II - 28) decided that the notice need not be in writing.

This section of the statute is quite clear in stating that the notice need not be given directly to the employer. It may be given to "some person representing him". Again the Supreme Court of Errors had to lay down a decision on that point in Palumbo vs. Fuller. * In this case the court held that failure to give notice to direct employer does not release a principal who had notice.

The statute is also quite clear on the point that even though the employee failed to give notice to his employer, the employee is still entitled to compensation in the absence of such notice, provided his employer could not show

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* 99 Conn. 353; 122 Atlantic 63; 5 Conn. Comp. Dec. II - 20

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* 99 Conn. 328; 122 Atlantic 63; 5 Conn. Comp. Dec. II - 30

that he had sustained any prejudice as a result of this negative conduct on the part of his workman. This rule was handed down in the Supreme Court case of Bongialotte vs. Eines Company. * It was further shown in Thompson vs. Towle (98 Conn. 740; 120 Atlantic 503; 5 Conn. Comp. Dec. II - 20) that a similar failure on the part of the employee to give notice does not deprive him of medical expenses unless prejudice may be proved. In this particular instance it is easy to see how a workman's failure to report a minor injury may be accompanied by his neglecting to use the correct or any type of medication, in which case infection may develop and later even an amputation may become necessary. Loss of life may then result from neglecting to attend immediately to an injury which if properly treated might have been classed as a minor casualty. In such an instance it seems manifestly unfair to the employer to saddle him with all the costs, especially when he stood ready to provide proper medical treatment as soon as he was notified of the injury. It is this type of situation, exemplifying neglect on the part of the employee and spelling detriment to the employer, which the statute attempts to guard against in its reference to any prejudice which the employer may sustain. Yet, placing the burden of proof in such instances upon the employer gives the workman the protection he needs, especially when he is opposed in his claim by the legal ex-

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* 97 Conn. 551; 117 Atlantic 696; 4 Conn. Comp. Dec. II - 81.

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perts of the insurer.

Submission to Medical Examination.--Inasmuch as the Act is very definite regarding the responsibility of the employer to furnish immediately all requisite medical and surgical aid as well as hospital service, it is equally definite in placing the responsibility on the employee of accepting the appropriate medical and surgical aid or hospital service. In Section 5232 there is not only the statement that the employee should accept the aid given, but in the absence of medical and surgical aid or hospital service it is stated that he is to provide these essentials for himself, the employer, of course, being held liable for their cost. "If it shall appear to the commissioner that an injured employee has refused to accept and failed to provide such reasonable medical, surgical or hospital service, all rights of compensation under the provisions of this chapter shall be suspended during such refusal and failure." *

Furthermore, the employee may be called upon at any time within reason at the request of the employer or at the direction of the commissioner to submit to a medical examination. The examination must of course be conducted by a reputable practicing physician or surgeon, provided and paid by the employer ** or the insurer of the employer. The purpose of such an examination is, of course, apparent. It may not only be resorted to to determine the nature of the injury

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* The Workmen's Compensation Act as Amended in 1931, Section 5232.

** Idem

and the extent of the disability, but if given some weeks after the date of the injury it is used as a follow-up on the case, and also as a means of combating what the insurance companies call malingering.

Again in Section 5248 the statute is emphatic in declaring the obligation of the workman to submit to any reasonable medical examination. There can be little doubt about the construction of the following quotation from Section 5248: "The refusal of an injured employee thus to submit himself to a reasonable examination shall suspend his right to compensation during such refusal". * No supreme court decision was necessary to affirm language as clear in its specification as that quoted above.

Effect of Prior Disability.--The employer and his insurer are adequately protected against unjust claims on the part of employees by the provisions embodied in Section 5267 of the Act, if such claims arise as the result of an injury the employee has sustained which was due to a physical defect that the employee had prior to his employment. The provisions of this section also apply to an employee who sustained an injury outside his employment which resulted in his having a physical defect. In this situation where the employee has such a physical defect which was not caused by his regular work, if he later becomes injured on the job because of that physical disability with which he was encumbered, the employer or his insurer is relieved of all liability for

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* The Workmen's Compensation Act as Amended in 1931, Section 5248.

* The Workmen's Compensation Act as Amended in 1931, Section 8568.

injuries directly attributable to the employee's prior physical disability.

Waivers.--This provision in the law, however, is not an automatic one, but is dependent upon the employer's securing a signed waiver from the employee of the employee's right or those of his dependents as affected by this provision. In case of a dispute regarding the extent to which the prior physical disability caused the later injury, the commissioner having jurisdiction is to decide whether or not the later injury was attributable in a material degree to the prior physical defect.

In order to facilitate the settlement of disputes arising out of such situations and to obviate considerable litigation in such cases very definite requirements regarding the form for such waivers are carefully prescribed by the Act. For example, no waiver becomes effective unless the defect in question is plainly described therein, nor until the commissioner is certain that the workman who signed such waiver fully understood its meaning. The writer had an opportunity to see the extent to which the commissioner and his assistants go to be certain that the employee realizes the full importance of the waiver before signing it. During the course of one of his visits to that commissioner's office he saw at first hand the smooth working of several of the provisions embodied in the Act. He was greatly impressed by the unofficiousness, the informality, the patience, the courtesy, of the small but efficient personnel of this office. Here indeed are public servants -- public servants in the highest sense which that title implies, much more

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over-worked than over-paid. It was not difficult to see that this commissioner and the two women assisting him were working for considerably more than their salaries -- working hard without question to help make life a little less harsh, a little less painful for the mass of common workmen, many of whom came to them with their fears and their injuries and with the confidence of a child in the willingness and ability of these kind public officials to help them. It is easy, then, to see how the commissioner and his loyal assistants feel somewhat repaid.

If the employee who has sustained a prior physical disability is a minor, one of the parents or a guardian must have given approval to the waiver in writing before it will become effective. Finally, the effectiveness of any such waiver depends upon the discretionary powers of the commissioner who must have approved such waiver in writing and furnished each of the parties interested with a copy of his approval on the proper form provided for that purpose.

Such precise and careful construction of this section of the statute has not only served to protect the employer against unjust claims for which he could not fairly be held liable, and to establish responsibility on the part of the employee for his physical condition prior to his employment and outside the job, but it has also served to eliminate endless disputes arising out of such situations by the clarity with which the conditions are expressed. The fact that there are no supreme court rulings quoted on the law embodied in Section 5267 of the Act is an eloquent testimony to its unmistakable language and equal law.

Position of Minors and Incompetent Persons.--In the preceding section of this chapter we saw that minors must have the written consent of a parent or guardian to give effect to a waiver concerning any physical disability with which they may be burdened. Section 5258 treating of "Action for Minors and Incompetents" lays down as a general principle the rule that any employee who is a minor or mentally incompetent who is effected by the Act will have a parent or guardian acting in his behalf, the acts of whom shall be construed as if the minor or otherwise incompetent person had performed these acts, while capable of activity in his own behalf. This, of course, is good law and quite the customary procedure for situations in which minors and mental incompetents may be involved. The principle is in no way peculiar to compensation law, but is well applied in industrial accident cases.

In order to protect the minor or mentally incompetent person further, the commissioner is empowered by the text to authorize or direct the payment of compensation directly to a minor or to some responsible person other than the parent or guardian whom the minor shall nominate, such nomination to be subject to the approval of the commissioner.

It will be seen, then, that the subjects covered in this chapter very definitely define the responsibilities of the employee with reference to the operation of the Act. While none of the requirements treated in this relation are unreasonable, they do serve to establish a certain sense of responsibility on the part of the employee in his legal re-

lationship to the statute which is primarily enacted to assure him a certain measure of relief from the distressing situations arising out of the physical dangers inherent in his occupation. None of these requirements, however, are unreasonable nor difficult for a worker of low intelligence to follow; yet, they serve to protect employers from unjust claims which might otherwise arise. The small percentage of cases carried to the courts stand as indisputable testimony to the hard work, the impartiality, and the intelligent understanding of the varied and conflicting elements involved on the part of the district commissioners who discharge their arduous, though intensely interesting, tasks without ostentation and without the knowledge on the part of a large proportion of the community of the splendid work which these officials are doing to relieve the community of problems which would otherwise be thrust upon it.

C H A P T E R X

THE WAITING PERIOD

Warren H. Pillsbury, Compensation Expert for the California Industrial Accident Commission, writing on Workmen's Compensation in "Modern American Law" states: "The word 'compensation' is a misnomer, as an injured workman is never fully compensated for the loss sustained by him. It is intended merely that the payments tide him over his period of adversity". * Payments which he does not receive, however, cannot very well tide him over; for an almost universal principle in American compensation law is the employment of the waiting period.

With the exception of Oregon and Porto Rico, where no waiting period has been written into the law, all the American states which have a compensation law have adopted the principle of the waiting period. With the two exceptions mentioned above the waiting period varies in the individual states from three days to two weeks. In Connecticut the waiting period is one of seven days duration.

Retroactive Feature.--A considerable number of the states have a retroactive feature in connection with the waiting period. The retroactive feature in the states having one runs from two to eight weeks. The Connecticut Act in Section 5233 provides for such a retroactive provision, for which the time is four weeks. It will be observed that in regard to

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* 5 Modern American Law III-37

CHAPTER X

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* 3 Modern American Law 111-37

both the number of days in the waiting period and the length of time which the disability must run before the retroactive provision applies, the Connecticut law strikes the mean between the maximum and minimum duration of time for all states which have a compensation code.

An illustration will serve to make the meaning of Section 5233 more clear. If a workman is incapacitated as a result of an injury received arising out of and in the course of his employment, he is not entitled to any part of his wages for the first seven days of his disability. If his disability continues for eight days he would be compensated according to schedule for one day only. However, if his incapacity continued for a period of four weeks or longer, the compensation which he would receive would be based upon the same schedule, but the time for which he would receive compensation would date from the day of his injury. This retroactive provision embodied in the Connecticut law and the laws of many other states seems manifestly more just than laws which are not retroactive in this respect. Section 5233 of the Connecticut Act further specifies that the injured employee shall be entitled to full wages for the entire day on which he sustained the injury. The day of the accident, then, will not be counted as one of the days of incapacity; consequently, the waiting period does not begin to run until the day following the accident.

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is customary to exempt the employer from the liability for any injury which does not disable the employee for at least one week. If the incapacity lasts less than two weeks, the employer is exempt from this first week of the incapacity, but if the incapacity lasts longer than two weeks, the payments for disability date from the day of the injury. * But this theory of the waiting period developed in England under conditions quite different from those in the United States, chief of which was the existence of Friendly Societies. These societies to which the workers contributed extended their sickness benefits to the victims of industrial accidents for a time at least equal to the waiting period, after which the compensation provisions functioned. Hence, there was no actual hardship imposed upon the disabled by the waiting period, and the circumstances giving rise to this theory were vastly different from those which prevail in Connecticut or in most of our American states.

American Writers on the Waiting Period.--American writers attempt to justify the waiting period for a number of fairly good reasons. Blanchard, writing in 1917 says: "Its purpose is to exclude unimportant injuries and to prevent malingery. In a multitude of cases where disability lasts for a few hours or days the cost of administration of compensation benefits would be disproportionately large in comparison with benefits and would result in a net social loss. This part makes unnecessary the exclusion of a large

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* RHODES, J. E., "Workmen's Compensation", p. 141.

class of accidents, which make a considerable showing in the aggregate, but which are of little importance in the individual case". * This opinion of Blanchard's is typical of the American writers who are more or less closely associated with insurance. Blanchard believes that if the period is too short it will tempt the workman to prolong his period of idleness in order to secure payment of benefits; and if it is too long an undue burden of loss will be imposed on him. This writer, apparently subscribes to the theory of the waiting period, but concludes that it should not be longer than two weeks.

Michelbacher and Nial, insurance executives, discussing the waiting period feel that legislators may use this principle to augment the benefits in fatal cases or those of severe injury, although this could be accomplished anyhow by slightly higher premium rates. "The injured man", says the Vice-President of the Great American Indemnity Company and his co-author, "can do without compensation payments for a short time". ** Unquestionably a man drawing a vice-president's salary can, but this theory is questioned seriously by the writer when applied to an underpaid millhand. Certainly, the existence of his injury will not serve to compensate the landlord or grocer during the waiting period. According to this view the waiting period in theory may very well become a waiting period in fact, in which the eighteen-dollar-a-week laborer and his family actually wait for some nourishing food to sus-

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* BLANCHARD, R. H., "Liability and Compensation Insurance", p. 114

** MICHELBACHER and NIAL, "Workmen's Compensation Insurance", p. 148

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tain them. Yet, it is true, though not necessarily relevant to social justice, that the waiting period reduces the cost of administration, as, according to the same writers, approximately forty per cent of all injuries caused disability of one week or less. The same writers also feel that the waiting period tends to prevent fraud on the part of the injured employee. The writer of this thesis, however, cannot subscribe to the idea that the average workman would be satisfied to accept a percentage of his wages rather than the full wage in order that he might stay out of work two or three days if there were no waiting period and compensation dated from the day of the injury. "In this way", write Michelbacher and Nial, "he would be able to take advantage of his injury to spend a part of the period of his alleged disability on vacation". * Surely, jamming one's hand is not a very pleasant prerequisite for an enjoyable vacation. These casualties are hardly within the scope of an insurance vice-president's experience. Can it be that high insurance officials are so totally unacquainted with the everyday lives of the millions of workers which their compensation policies affect that they think a workman will welcome a smashed member for a few days' painful leisure at a percentage of his wages? The writer is convinced that they are.

If it be thought that the writer is too sympathetic with the employee on the question of the waiting period, perhaps, the reference to authority will show that his attitude is quite

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* MICHELBACHER and NIAL,"Workmen's Compensation Insurance", p. 148

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consistent with that of I. M. Rubinow, who is, perhaps, America's most scholarly writer on social insurance. Discussing the waiting period Rubinow writes: "The problem of compensation for the very large number of petty accidents has received a great deal of attention in European discussions. A very large proportion of accidents are quite petty, leading to a disability of a very few days only. Evidently it is a great advantage, from an administrative point of view especially, if these accidents are kept out of the compensation system, at least as far as the granting of financial aid is considered. Fewer accidents need to be investigated and adjudicated. On the other hand, even a short disability means some loss to the wage-worker, which he must rightfully resent. It is unfair to him to saddle upon him a loss which may have a perceptible influence upon his comfort. The problem is met in a very effective way in Germany, Austria and Hungary, and Russia, four countries having compulsory sickness insurance in addition to the accident compensation system. In these countries only accidents of a certain degree of gravity are handled by the compensation system -- fatal accidents, all cases of permanent disability, and of temporary disability over a certain fairly long period -- thirteen weeks in Germany, ten weeks in Hungary, and four weeks in Austria, the minor accidents being taken care of by the sickness-insurance organizations". *

The waiting period in several of the European countries may be worth mentioning as comparison. The period is six days

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* RUBINOW, I. M., "Social Insurance", pp. 118-119

in Finland, four in France, three in Austria and Hungary, two in Netherlands, and in Italy and Spain, where the shortening of the waiting time became an issue successfully fought by the workingmen, it has been eliminated entirely.

CHAPTER XI

THE PAYMENT OF COMPENSATION

Legal and Medical Fees.--While the waiting period with reference to the payment of compensation is a recognized principle of the law in Connecticut as well as in most other states, there is no waiting period governing the employer's supplying all the requisite medical aid. Such a regulation, of course, would defeat the very purpose of the system and ultimately run up expenses far higher than those incurred when unlimited medical aid is immediately rendered. The prolongation of the illness resulting from the injury would not only be common, but dangerous infections or other complications might set in if the workman were not treated immediately for his injuries or ailments.

In recognition of these facts the Connecticut Act in the same section in which it places the responsibility upon the injured employee to give notice of his injury to his employer also states that "the employer, as soon as he shall have knowledge of any such injury, shall provide a competent physician or surgeon to attend to the injured employee, and in addition shall furnish such medical and surgical aid or hospital service as such physician or surgeon shall deem reasonable or necessary". * But it seems to the writer that this provision for medical aid is a bit futile when no similar provision is made to provide food for the injured workman or his family during the period of his incapacity.

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* The Workmen's Compensation Act as Amended in 1931, Section 5232

CHAPTER II

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* The Workmen's Compensation Act as Amended in 1921. Section 5232

To thoroughly protect the employee, under the provisions of the same section, the employee is empowered to provide the necessary medical care for himself at the employer's expense if the employer has failed in his obligation in this respect. In such a case the employer may not later compel the employee to change his physician, surgeon, or hospital, unless the commissioner specifically orders or approves such change. However, if the injured employee without good reason refuses the medical and hospital service furnished by his employer, although this will not defeat his right to compensation, it will automatically make him liable for his own hospital and medical fees and expenses. The commissioner, however, may authorize or direct a change of physician, surgeon, or hospital, if he feels that the injured employee is not being competently or adequately cared for.

There have been a number of appealed cases on points of law raised by this section. The chief point raised in these cases was the extent to which the employer is responsible for the various degrees of medical service furnished, the general rule being that the pecuniary liability of the employer for medical and surgical service shall be limited to charges which prevail in the same or similar communities for similar treatment of injured persons of a like standard of living to that of the injured person, when such persons pay their own expenses. For example, if the workman were to incur an injury outside his occupation and as a result was confined to a ward in a local hospital at his own expense, should he incur a sim-

ilar injury on the job, he would not be entitled to a private room in the hospital or to other accommodations more elaborate than that with which he might provide himself in the first instance. An artificial leg, however, has been held to be a legitimate medical service to be provided by the employer * and an osteopath is a physician within the meaning of the Connecticut Act. ** All fees of attorneys, physicians, or other persons for service rendered in accordance with the provisions of this Act may be made subject to the approval of the commissioner. This provision, however, specified in Section 5259 is merely in case of a dispute regarding such fees. Usually such matters are adjusted by the employer's insurer and do not reach the commissioner too frequently. The writer understands that attorney's fees are almost always a private matter between attorney and client when an injured employee engages an attorney, and the commissioner will not interfere with such private arrangements. If, however, an employer complains of an extortionate attorney's fee, the commissioner has the power to disapprove such fee.

The Time and Manner of Payment--The commissioner has the power to order the particular times in the week and the manner in which compensation may be paid, which shall be paid to the persons entitled to receive them or to those entitled

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* Olmstead vs. Lamphier - 93 Conn. 21; 104 Atlantic 488; 2 Conn. Comp. Dec. II - 151.

** Towers vs. Glider & Levin - 101 Conn. 169; 125 Atlantic 366; 5 Conn. Comp. Dec. II - 103.

to act for such persons. The commissioner may also direct the commutation of such weekly sums into monthly or quarterly payments, or with a single lump sum or approve agreements to such effect if he deem it wise and just; no such agreements, however, will be binding without his approval. This excellent feature of the Act is intended to protect the injured party from making an agreement for a settlement which would ultimately be to his disadvantage. In every case of commutation the period of incapacity must be found, and it must also be shown that it is just or necessary to commute. An example of the necessity for commutation and the justice prompting such an agreement might well be the case of an employee, unable to return to his trade because of his injuries, who had an opportunity to set up a news-stand or other business where his ability to earn would not be materially affected by his incapacity. The writer is informed that it is the practice among some insurance companies to pay compensations weekly rather than monthly when the injured employee may call for the payment in person. If, however, payment is made by mail or to a dependent out of the state or country the insurer prefers to pay by the month or less frequently to save mailing expenses and expenses incidental to taxes on checks.

Average Wages as Bases for Computation.--Compensation payments for any given number of weeks during which compensation is to be paid are based upon a unit called the "average weekly earnings". In all cases for which compensation is paid

one-half the average weekly earnings is the amount so paid according to a schedule of benefits commensurate with the fatality, total or partial incapacity sustained.

The average weekly wage is ascertained in the following manner: The total wages received by the injured workman from the employer in whose service he was injured are computed for the twenty-six calendar weeks immediately preceding his injury or the number of those weeks during which he worked. This sum is then divided by twenty-six if he worked all twenty-six weeks or by the number of weeks of the twenty-six during which he did work. Some such system is necessary to establish a basis for computing the average weekly earnings of a host of employees, some of whom are paid by the week, others by the day or hour, and still others at a piece rate. An example of the application of this method might be the following: A machinist working at piece rates in a factory, where he had been employed for some time prior to twenty-six weeks before the accident, was out of work one week in the half year preceding the accident. During the twenty-six week period prior to his injury working at piece rates he had earned a total of $615. His average weekly earnings would then be the quotient when $615 was divided by twenty-five, as the week during which he earned nothing is not to be included in the divisor. It will be seen that his average weekly wage would be $24.60. The computation he would receive would be based upon that figure. According to the statute he would be entitled to one-half his average weekly earnings, or in this case $12.30 a week for

a given number of weeks in accordance with the benefit schedule outlined in Section 5237 if the injury resulted in partial incapacity only. Suppose the workman's injury resulted in his losing the first phalanx of the second finger of his right hand, according to Section 5237 he would receive $12.30 for ten weeks, or $123 in all. His medical, surgical, and hospital expenses would be entirely paid for by the employer or his employer's insurer. We need not enter into a discussion of the merits of the benefit schedule at this point. Twelve dollars and thirty cents is considerably better than nothing in the case mentioned, but one cannot help reflecting that our compensation laws still have a long way to go in their attempt to attain a greater measure of social justice for the victims of industrial accidents. Surely, it cannot be questioned that the ability of the piece rate worker in this example to earn a decent wage would have been greatly impaired as a result of his accident. While the compensation was paid for ten weeks and during that time it will aid to mitigate the loss in earning power sustained, the loss of a part of the workman's finger is a detriment which he must sustain for life and one which may immediately unfit him for the job at which he was making a fair wage prior to his injury. Certainly the ability to make a decent week's pay under a piece rate system is dependent upon speed and efficiency on the part of the workman and these requisites urgently call for his having all members unimpaired.

Referring again to Section 5238, if the workman has been employed for a net period of less than two calendar weeks prior

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to his injury, his weekly wage is considered to be equivalent to the average weekly wage prevailing in the same or similar employment in the same locality at the time of his injury.

In the case of a minor under eighteen years of age whose future earning power may have been greatly and prematurely impaired, the commissioner is empowered to add fifty per centum to such minor's average weekly wage. This provision is commendable in its attempt to write the proper spirit into the law when it recognizes even to this limited extent the obligation of Industry to the youths whom its mechanical techniques have made less capable of taking their place in the struggle for existence in a highly competitive society.

Provisions for Dependents.--When the employee's injury results in his death, payment of compensation is made to his dependents in accordance with a scale of benefits discussed in Chapter VIII. Section 5235 of the Connecticut Act defines dependency and distinguishes total from partial dependence. The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee: "(a) A wife upon a husband with whom she lives at the time of his injury or from whom she receives support regularly; (b) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly; (c) any child under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, upon the parent with whom he is living or from whom he is receiving support regularly at the time of the injury of such parent, there being no surviving dependent parent. In case there shall be more than

employment in the same locality at the time of his injury.

In the case of a minor under eighteen years of age whose future earning power may have been greatly and permanently impaired, the commissioner is empowered to set fairly per centum to such minor's average weekly wage. This provision is commendable in its attempt to write the proper spirit into the law when it recognizes even a thus limited extent the obligation of industry to the youths whom its mechanical techniques have made less capable of taking their place in the struggle for existence in a highly competitive society.

Provisions for Dependents.--When the employee's injury results in his death, payment of compensation is made to his dependents in accordance with a scale of benefits discussed in Chapter VIII. Section 2(3) of the Connecticut Act defines dependency and distinguishes total from partial dependence. The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee: "(a) A wife upon a husband with whom she lives at the time of his injury or from whom she receives support regularly; (b) a husband upon a wife with whom he lives at the time of her injury or from whom he receives support regularly; (c) any child under the age of eighteen years, or over said age *but* physically or mentally incapacitated from earning, upon the parent with whom he is living or from whom he is receiving support regularly at the time of the injury of such parent, there being no surviving dependent parent. In case there shall be more than

one child thus dependent, the death benefit shall be divided equally among them". *

If at the time of the injury which resulted in a fatality there is more than one person wholly dependent upon the deceased, as a wife and a mother, for example, the statute states that the compensation shall be divided equally among them, and if there are also persons partially dependent in addition to the two persons who are totally dependent, those persons partially dependent will not receive compensation. The theory implied in this provision is to the effect that anyone who is only partially dependent and therefore somewhat self-supporting will be better able to adjust himself to a position of independence than those who are totally dependent who therefore cannot very well be deprived of the compensation they would receive.

The dependence of a widow or a widower of a deceased employee automatically terminates with their remarriage. If, however, there are other dependents, upon the remarriage of the dependent widow or widower, compensation shall continue to be paid to such other dependents of the deceased employee during the period during which such compensation is payable.

With the exception of a child who is physically or mentally incapacitated from earning the presumptive dependence of the child terminates when he reaches the age of eighteen years.

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* The Workmen's Compensation Act as Amended in 1931, Section 5235

* The Workmen's Compensation Act as Amended in 1921. Section 25(3)

If the deceased employee has anyone who is totally dependent upon him at the time of the fatality, even though such dependents are non-resident aliens, they will receive compensation. But if in addition to such alien dependents the deceased shall have some person or persons in the State of Connecticut who are dependent in fact, as a wife, for example, the commissioner may equitably apportion the sums payable as compensation between the deceased's alien dependents and the widow who resides in Connecticut.

The subject-matter of Section 5235 under discussion has provided material for considerable controversy, there being no less than twelve cases in which an appeal was taken to the Supreme Court of Errors on the questions of law implied in this section of the Act. Some of the questions which the Supreme Court ruled upon involved a consideration of the following: When is the father dependent? When is the mother dependent? In the case of Draus vs. The International Silver Company (105 Conn. 415; 135 Atlantic 437; 7 Conn. Comp. Dec. II - 38) the status of a mother's dependency was determined to be the amount which the deceased had contributed to her support while living, and that amount was held to be the amount of her dependency irrespective of what her board costs. In MacDonald vs. Atlantic and Pacific Tea Company (95 Conn. 160; 111 Atlantic 65; 3 Conn. Comp. Dec. II - 77) it was held that a person cannot be said to be a dependent when there are sufficient means at hand for supplying his or her necessities.

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In another case * a mother of the deceased was held to be dependent within the statute although the deceased had made no contribution toward her support prior to the fatality. Obviously, the fact that he was legally compelled to contribute to her support, although never forced to do so, was sufficient justification for considering her a dependent within the meaning of the statute. Apparently the dependent in this case was supported prior to her son's accident by a relative who had no actual legal obligation to assume such responsibility, but upon the death of the son such relative attempted to invoke the statute to be relieved of the obligation which he had voluntarily assumed. All of the claims, however, which dependents have made and which were contested by the employer were not strictly within the meaning of the statute and consequently were not allowed by the Supreme Court of Errors. For example, in Atwood vs. Connecticut Light and Power Company (95 Conn. 669; 112 Atlantic 269; 4 Conn. Comp. Dec. II - 13) the plaintiff contended that the fact that the deceased had contributed money which was used for the purchase of a house by the plaintiff's parent made him a dependent; but the Court ruled otherwise.

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* Mazzie vs. Lavitt - 112 Conn. 233; 152 Atlantic 144; 9 Conn. Comp. Dec. II

CHAPTER XII

THE ADMINISTRATION OF THE ACT

Workmen's Compensation law is so different in the situations which it attempts to solve and so specialized in its character that an entirely different type of legal administration is necessary in cases arising out of industrial accidents. With the exception of eight states and the Territory of Alaska, workmen's compensation cases are not primarily decided by the court. The most usual practice is to submit such cases for arbitration to a single commission or board which specializes in this type of work. Thirty states and Porto Rico follow this method. Connecticut, Iowa, New York, Rhode Island and Hawaii each have a system of administration differing from each other and somewhat different from the single commission or court tribunal which prevails in the vast majority of states.

The Commission.--In Connecticut there are five compensation commissioners, one for each of the five congressional districts in the state. In the vast majority of the cases which he is called upon to decide, each commissioner acts independently of the others, and the powers of a commissioner are rather wide and inclusive. It will be seen from the foregoing discussion that the range of the commissioner's powers in disputes arising in the territory over which he has jurisdiction are very great indeed. He is called upon to exercise a great amount of discretion and judgment on matters pertain-

CHAPTER XII

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ing to the compensation law, which in many cases are extremely technical and highly involved. Not only must he be well versed in every provision of the elaborate compensation statute, but he must also be familiar with industrial conditions, conditions surrounding the safety of workers in the many and varied factories which are located within his jurisdiction. His knowledge of medical questions pertaining to injuries, which the worker may receive, and other circumstances surrounding the worker both on his job and outside, must be detailed and will naturally call for a staggering amount of specialized information. It is easy to see how an official devoting all his time to adjusting the problems arising out of industrial accidents can become so much more efficient and, therefore, is of greater benefit to the community which he serves than the average judge in a law court would be in similar cases. The court is cluttered with so many different types of cases that it becomes utterly impossible for the judge on the bench to acquaint himself with details as intricate as those with which the commissioner is versed because his work is of such a specialized character.

Appointment and Tenure of Office.--On or before January 1 of each year the Governor of the State of Connecticut is empowered to appoint a competent person to be compensation commissioner for one of the five districts, the appointment to be for a period of five years. Each year as the term of the commissioner of one of the five districts expires the governor may reappoint such a commissioner or name a successor.

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If a vacancy should occur at any time during the five-year term, the governor may also fill such a vacancy. Reappointment to this office, which is not so easily filled with competent persons whose experience and training would fit them for the difficult duties which they are called upon to exercise, is quite common. If, however, a commissioner is not properly discharging the duties of his office, the governor may have him removed for good cause and the good of the public service. The commissioner to be removed, however, must first be given due notice and he is entitled to a public hearing before removal if he demands it.

Any compensation commissioner who has ceased to hold office may be permitted to settle and dispose of all matters relating to appealed cases and to any other unfinished business pertaining to cases heard by him. When acting in such capacity he has the same powers as if he were still a compensation commissioner.

Powers of Commissioners.--* The powers of a commissioner in settling industrial accident cases are similar to those of a judge in a law court. Each commissioner has the power to summon and to examine under oath such witnesses as are necessary to a just hearing of the case before him. He may also require the production of books, records, vouchers, memoranda, documents, letters, contracts, or other papers, which have any bearing on the matter which he may be called upon to adjust. If a commissioner should be temporarily in-

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* The Workmen's Compensation Act as Amended in 1931, Section 5242

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capacitated from hearing any case he shall designate some other commissioner to hear and decide such case, and the power which he delegates shall be held by the other commissioner acting for him, and it shall be sufficient to give such other commissioner complete jurisdiction over the matters so delegated. The orders of a compensation commissioner when acting on the subject-matter within the meaning of the Act and the scope of his powers are as mandatory as if they were issued by the Superior Court. The Superior Court on the application of the commissioner will enforce by appropriate decree or process any provision of the statute or any order of a commissioner who was acting within the scope of his authority.

Powers of the Commission.--When the five commissioners act together as a board they are empowered to adopt and change such rules or methods of procedure and forms as they shall consider expedient for the purposes of carrying out the spirit and letter of the Compensation Act. The commissioners are to prepare and submit to the governor a biennial report of their affairs. This report may also include any recommendations which they think may serve to further the purposes for which the compensation law was enacted.

Jurisdiction of Commissioners.--Section 5242 of the Act specifies that the commissioner for the first congressional district shall maintain an office at some convenient location in the city of Hartford; the commissioner for the second district an office similarly located in the city of Norwich; the commissioner for the third district in the city of New

Haven; the commissioner for the fourth district in the city of Bridgeport; and the commissioner for the fifth district in the city of Waterbury. Each commissioner is required to keep his office open during reasonable business hours of every day except Sundays and legal holidays, but he may hear and decide cases at any other place within his district. The usual practice is for the commissioner to reserve the morning hours for the hearing of cases while the afternoon hours are devoted to outside investigations on his part, during which time his assistants are available at the office to answer the many questions which employees and others may have regarding the multitude of situations over which the office has jurisdiction.

Personnel of the Commission.--At the present the personnel of the commission consists of four attorneys and one medical doctor. The advantage of this inclusion of a physician is very obvious when the commission is acting as a board. When the individual commissioners are acting independently, it has been seen that a considerable knowledge of both law and of medicine must be a part of each commissioner's equipment. At the present time the Connecticut Compensation Commission is composed of the following personnel:

FREDERIC M. WILLIAMS,
Commissioner for the Fifth Congressional
District and Chairman,
Office, Court House, Waterbury.

LEO J. NOONAN,
Commissioner for the First Congressional
District.
Office, 54 Church Street, Hartford

ALBERT J. BAILEY,
Commissioner for the Second Congressional
District.
Office, 43 Broadway, Norwich

Haven; the commissioner for the fourth district in the city of Bridgeport; and the commissioner for the fifth district in the city of Waterbury. Each commissioner is required to keep his office open during reasonable business hours of every day except Sundays and legal holidays, but he may hear and decide cases at any other place within his district. The usual practice is for the commissioner to reserve the morning hours for the hearing of cases while the afternoon hours are devoted to outside investigations on his part, during which time his assistants are available at the office to answer the many questions which employees and others may have regarding the multitude of situations over which the office has jurisdiction.

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EDWARD J. KELLY,
Commissioner for the Second Congressional
District,
Office, 49 Broadway, Norwich.

CHARLES KLEINER,
Commissioner for the Third Congressional
District.
Office, 151 Court Street, New Haven

CHARLES E. WILLIAMSON,
Commissioner for the Fourth Congressional
District.
Office, 955 Main Street, Bridgeport

It is the opinion of the writer that the organization of the Connecticut Compensation Commission into five commissioners, who administer the law individually within their jurisdiction thus decentralizing the powers of a board, is by far the best type of organization for the settlement of industrial accident cases. Any efficient officer, acting alone, will act with a degree of speed and decision so necessary in these cases. A board would not be capable of equal efficiency. The very nature of committee organization calls for compromise. The commissioners, having a smaller territory over which they exercise jurisdiction, are in a position to become thoroughly acquainted with the industrial conditions within their districts. Consequently, they are in a better position to get action regarding the enforcement of safety measures in the factories which come within their jurisdiction than any board would be when acting as a centralized body with an entire state to supervise. The discussion in the chapter following relating to the procedure for settling cases will serve to show to a greater extent the excellence of the type of organization which Connecticut maintains for the enforcement of its compensation laws.

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CHAPTER XIII

SETTLEMENTS OF DISPUTES UNDER THE ACT

The outstanding distinction between the settlement of an industrial accident case before a compensation commissioner and the adjudication of a negligence case under conditions which prevail in the law court is chiefly one of simplification of procedure. The formal and exaggerated dramatic background of the American Superior Court is reduced to one of a simple and businesslike setting. There is no robed judge, no formal courtroom, and no jury. While the settlements reached in that part of the commissioner's office which is set aside for hearings are just as binding as if they were tried in court, the very lack of ostentation and pomp accompanying the informal procedure under the Compensation Act is the element which permits a great number of cases to be speedily heard and satisfactorily adjusted. As a matter of fact, this informality of atmosphere is so marked that one may find himself in a commissioner's office for some little time before he realizes that the particular arrangement of the railings, desks, and the chairs are intended to make these objects serve as bench, bar, and witness-stand. In questioning the staff of one of the commissioners on this point the writer learned that this effect was secured as a deliberate result of the policy of the commissioners to make the atmosphere as informal and as natural as possible and thus to encourage the injured workman to relate his story simply and clearly and with-

out fear of intimidation. The writer was given to understand that the employee is permitted to relate his story of the accident in his own way without interruption, even if he includes the most irrelevant details. It will be noted that when a commissioner takes this attitude in regard to the hearing of testimony he is recognizing the newer and sociological principles implied in the compensation law which call for a more or less fair adjustment rather than for the proof of negligence. Furthermore, this simplified procedure results in the speeding up of the case. Many of the facts surrounding the accident are readily admitted without the necessity of proof. The young attorney who has had no experience with compensation cases frequently finds himself embarrassed when he attempts to prove facts which to his surprise are immediately conceded at the hearing.

Hearing of Claims.--All cases of industrial accidents, however, need not be submitted to the commissioner for a hearing. In ninety per cent of the cases the employer or his insurer adjust the matter in accordance with the provisions of the compensation law without resorting to a hearing. It is only when an injured employee and his employer or the employer's legal representative fail to reach an agreement in regard to compensation that a hearing is required. In such an instance either party may notify the commissioner of the failure to reach an agreement and upon such notice the commissioner will set a date for a hearing, giving both parties notice of the time and place. The usual length of time intervening between the commissioner's notice and the hearing is approximately ten

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days. The commissioner is empowered to subpoena such witnesses as may be required and to allow them such fees and traveling expenses as are allowed in a civil action, the cost of which is to be paid by the party in whose interests such witnesses are subpoenaed. Both the employer and employee may appear at the hearing either in person or by attorney or other accredited representatives. Usually, if the employee is not too seriously injured he will appear in his own behalf, while the adjuster of his employer's insurance company will appear to defend the claim. No formal pleadings are required beyond certain informal notices which the commissioner may require, and in all cases the hearings under the Act are conducted by the commissioner in accordance with the rules of equity. He is not bound by the ordinary common law procedure nor by statutory rules of evidence or procedure. He uses his judgment in inquiring into the circumstances of the case, hearing simple testimony and examining written and printed records which may aid in his arriving at a decision which will best carry out the spirit of the Act. There are no entry fees or charges to either party in connection with a hearing, but the commissioner will furnish at cost certified copies of any testimony, award, or other official matter in connection with the case.

A superficial examination of the cases digested in the "Connecticut Compensation Decisions" would lead one to believe that the claimant is more successful if he engages counsel. But a more complete scrutiny of the data presented in these reports reveals that the reason for such a conclusion is due

to the fact that certain types of compensation cases, such as one involving grinder's consumption, for instance, are difficult to prove without the aid of legal counsel. This type of case is also a highly contestable type of claim. If an employee, seeking compensation, comes to the commissioner's office and honestly states the facts of his case, and if it appears to the commissioner or his assistants that such a claimant would benefit by retaining counsel, he is advised to engage an attorney. As the nature of compensation cases is vastly different from that of the routine practice of the average lawyer, if the claimant has no lawyer of his own, the office of the commissioner will furnish him with a list of attorneys who make a specialty of this work. In studying the compensation decisions one finds that most of the cases are handled by a comparatively small number of such specialists. He will observe that certain attorneys appear for the claimant in some cases and for the insurer in others. The writer discovered that this is due to the fact that these lawyers are regularly retained by one or more insurance companies in whose behalf they appear to defend claims and against whom they cannot take a case. They are, however, with their specialized ability available to represent a claimant whose case is being contested by an insurance company whom they do not represent. This accounts for their being at various times on both sides of the fence.

Awards.--As soon as possible after the conclusion of the hearing, the commissioner sends to each party a written copy

Awards.--As soon as possible after the conclusion of the hearing, the commissioner sends to each party a written copy

of his finding and award, filing a third copy in his office. The original award is to be filed in the Office of the Clerk of the Superior Court for the county in which the injury occurred, unless such injury occurred outside of the state, in which case the original award would be filed in the Office of the Clerk of the Superior Court in the county in which the commissioner's office is located. If neither of the parties file an appeal within ten days, the commissioner's finding an award will be considered final and may be enforced in the same manner as a judgment of the superior court, upon which the court may issue an execution. If the employer's insurer has been unduly negligent in making payments, the commissioner may include in his award interest at six per centum per annum.

Section 5251 which provides the statutory authority for the above procedure has been subject to considerable judicial review in which no less than eighteen cases have been appealed to the Supreme Court of Errors. Some of the points at issue have been as follows: What should the finding contain? What subordinate facts should the findings contain? Was the finding inconsistent with evidence on both sides? And in the case of Schmitt vs. American Brass Company (109 Conn. 599; 145 Atlantic 154; 8 Conn. Comp. Dec. II - 000) it was held that when an award has not been appealed from the finding it becomes final on subsequent hearings for further compensation.

Appeals.--Either party may appeal to the superior court for the county in which the award was filed at any time within ten days after entry of the commissioner's finding and award. Upon the filing of the appeal the clerk of the county court is to notify the appellee. To speed up actions appealed to the superior court from the commissioner's office these cases are given precedence in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state. Ordinarily, no costs are taxed either party on any such appeal either in the superior court or in the Supreme Court of Errors with the exception of the record fee when a case is appealed to the Supreme Court of Errors; but whenever any appeal from a finding and award of a compensation commissioner shall be taken to the superior court and it shall be found that such appeal was taken without good reason for the purpose of causing delay, the court may tax the party taking such frivolous appeal.

Considerably less than ten per cent of all awards made by the commissioner are appealed to the superior court; therefore, less than one per cent of all industrial accident cases now reach the county courts, when previous to the adoption of the Compensation Act they cluttered them. When an award is appealed to the superior court, the clerk of that court is required to notify the commissioner from whose award the appeal was taken. This notification must be in writing and the clerk of the superior court is to further notify the commissioner of any action of the court upon the appeal, and of the final disposition of the case, and to furnish the commissioner with a

copy of the decision. The superior court cannot, however, change a finding of a commissioner unless the commissioner has found facts without evidence, or has reached an unreasonable decision. *

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* Battey vs. Osborne - 96 Conn. 633; 115 Atlantic 83; 4 Conn. Comp. Dec. II - 48.

CHAPTER XIV

THE GUARANTEE OF ABILITY TO PAY COMPENSATION

Each employer who has elected to become liable under "Part B" of the Act must furnish the compensation commissioner with satisfactory proof of his solvency and financial ability to compensate injured employees or their dependents according to the provisions of the Compensation Act. If any employer is unable to so satisfy the compensation commissioner of his ability to make all payments required, he must file with the insurance commissioner an acceptable form guaranteeing the security necessary to the complete performance of all his obligations toward injured employees; or he may insure his full liability in any stock insurance company or employers' mutual association which is authorized to accept such risks in the State of Connecticut. *

Employers' Mutual Insurance.--In the vast majority of cases the employer passes on his liability to an insurance company organized to handle the industrial accident case. More frequently the risk is undertaken by a stock company, as this type of insurer seems to be most popular in the United States. For example, the membership list of the National Council on Compensation Insurance includes a membership of forty-four stock companies, twenty mutual companies, and four state funds. The mutuals listed in this organization are relatively large associations. The Connecticut Act under "Part C" provides for the

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* The Workmen's Compensation Act as Amended in 1931, Section 5255

formation of employers' mutual associations in the corporate form without capital stock for the purpose of insuring the liabilities of employers in accordance with the provision of the Workmen's Compensation Act. The statute specifically states that no mutual association shall be formed to include employers who are not engaged in the same or similar trade or business or in trades or businesses with substantially similar degrees of hazard of injury to employees. * This type of association, while not particularly favored by employers in the United States, is very popular in Germany, where the compensation movement first received its impetus. The strength of this type of organization lies in the tendency on the part of its members to study the causes of accidents, to make rules regarding the safeguarding of machinery, and to otherwise reduce the number of industrial hazards which naturally increase the costs of production in the trade or industry. Such mutual associations frequently make rules which impose fines on member employers who disregard measures of safety proposed by the association, thus increasing the assessments of other employers in the same association. In Germany these associations have had a high degree of success in compensation work and their limited extension in this country can be due only to two reasons: First, the general indifference on the part of American manufacturers to the problems arising out of the industrial accident; and secondly, to a busi-

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* The Workmen's Compensation Act as Amended in 1931, Section 5271

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* The Workmen's Compensation Act as Amended in 1921, Section 8271

nesslike and aggressive attitude on the part of American stock insurance companies who have been ever ready to assume the risk and take the burden completely off the shoulders of the American manufacturers.

Employers desiring to form a mutual association of the type contemplated under "Part C" of the Act must first receive the approval of the insurance commissioner, who may require such employers to satisfy him that the association is well designed and adequate for the purposes for which it was formed. The insurance commissioner is given jurisdiction over all mutual associations, but the associations are empowered to make their own by-laws to provide for admission, suspension, withdrawal or expulsion of members, and to do many other things in connection with the purpose for which they are organized. Furthermore, the mutual association has the right of appeal to the superior court from any decision or order of the insurance commissioner affecting the association.

Workmen's Compensation Insurance.--"Part D" of the Act prescribes the rules and regulations regarding the insurance of the employer's obligation as defined in "Part B". Section 5283 which provides for the liability of the insurer to the employee or his dependent states: " Whenever any employer of labor as defined in this chapter shall insure his liability under this chapter with any company authorized to transact a compensation insurance business in this state, the contract of insurance between such employer of labor and such insurer shall be a contract for the benefit of any employee who shall sustain an injury arising out of and in the course of his employment

by such insured by reasons of the business operations subscribed in the policy, while conducted at any working place therein described, or elsewhere in connection therewith, or, in the event of such injury resulting in death, for the benefit of the dependents of such employee." As far as the insurance company is concerned the section of the Act just quoted is the effective compensation law, inasmuch as the text of this section very definitely substitutes the liability of the insurance company to the injured employee. This section goes on to state that the insurer shall be directly and primarily liable to the employee and, in the event of his death the insurer shall be liable to his dependents for all compensation for which the employer is liable.

Even if there were a breach of warranty or misrepresentation on the part of the insured, the insurance company will not be permitted to set up such breach or misrepresentation as a defense available against an employee or his dependent. In other words every contract of insurance between an employer and the insurer shall be conclusively presumed to cover the entire liability of the employer in any proceeding before a compensation commissioner or on an appeal from a commissioner's award.

Reports Required of Insurer.--Every insurance company which undertakes to write workmen's compensation insurance must report in writing to the board of commissioners the name of the person or corporation insured, the day on which the policy becomes effective and the date of its expiration. This

report must be made within one week from the date of the policy. If a workmen's compensation policy is cancelled, cancellation does not become effective until one week after the commissioner has been notified of such cancellation.

To enforce the provisions of Section 5291, which prescribe the rules just set forth regarding the notification of policies issued and notice of their cancellation, the text of the same section provides for the imposition of a fine upon any insurance company which violates any of the above regulations. For each violation the insurer may be fined not less than one hundred nor more than one thousand dollars. These regulations quite apparently protect the employee from technicalities which might otherwise be raised by the insurance companies, giving rise to a decided lack of security to the workman entitled to compensation, and thus the very spirit of the Compensation Act would be defeated. The legislators who drafted the provisions of the Act, however, wisely visualized this possibility and in writing the text of Section 5291 they were successful in defeating any such possibility in the very last section of the Act.

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C O N C L U S I O N

After a fairly extensive study of the subject of Workmen's Compensation with particular reference to the law in Connecticut, and a careful examination of the historical, legal, economic, and sociological backgrounds of this field in the United States and in foreign countries, the writer of this thesis has arrived at the following conclusions:

1. The Workmen's Compensation Act in Connecticut compares favorably with similar codes in other states.

2. It is similarly a specific vehicle for carrying out by legal means one of the great principles of social justice -- industrial accident compensation.

3. It results in a more socialized and equable distribution of the burden due to industrial accidents than either common law rules or Employers' Liability Laws.

4. The administration of the Act in the hands of the compensation commissioners not only approaches the ideal for this type of adjustment but it also forecasts an informal type of procedure toward which our American courts

CONCLUSION

After a fairly extensive study of the subject of Workmen's Compensation with particular reference to the law in Connecticut, and a general examination of the historical, legal, economic, and sociological backgrounds of this field in the United States and in foreign countries, the writer of this thesis has arrived at the following conclusions:

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4. The administration of the act in the hands of the compensation commissioners not only approaches the ideal for this type of adjustment but it also represents an improved type of procedure toward which our American courts

are heading, with a minimum of the theatrical and a maximum of equitable administration of justice.

5. It tends to encourage accident prevention with lower premium rates as the selfish but, nevertheless, efficacious incentive.

While the Workmen's Compensation Act in Connecticut is a good code for the purpose for which it was enacted, it could be made much more effective if the following recommendations were carried out:

1. It should merely form a part of a comprehensive scheme for a system of social insurance which might well include sickness, old age and invalidity insurance, as well as employment insurance and widow's pensions. With Hartford functioning as the insurance capital of the nation, it would seem that there is plenty of actuarial talent available to the development of such a scheme.

2. To make the administration of the Act more effective the appropriation allotted the five compensation commissioners should be increased sufficiently to permit each commissioner to enlist the aid of a full-time statistician to work out accident-prevention measures and possibly an industrial phycholo-

3. It tends to encourage accident prevention with lower premium rates as the result but, nevertheless, effectively incentive.

While the Workmen's Compensation Act in Connecticut is a good code for the purpose for which it was enacted, it could be made even more effective if the following recommendations were carried out:

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2. To make the administration of the Act more effective the appropriation allotted the five compensation commissioners should be increased sufficiently to permit each commissioner to enlist the aid of a full-time statistician to work out accident-prevention measures and possibly an industrial physiolo-

gist to direct and supervise the work of the five statisticians throughout the state.

3. A series of publicity releases to acquaint the public with the work of the commissioners and the provisions of the Act as well as an educational program carried out in the form of lectures on the principles of the compensation law and safety psychology, given in cooperation with progressive manufacturers and labor unions.

4. The establishment of a state insurance fund * for workmen's compensation insurance as well as for other forms of social insurance, which as a competitor of private insurance corporations would at least spur them on to greater efforts as ardent merchandisers of social insurance.

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* The following states have established state funds which are given a monopoly on workmen's compensation insurance: Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, Wyoming.

The following states have established state funds which compete with private insurance carriers for workmen's compensation insurance: Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, Pennsylvania.

With a system established for the appointment of officials similar to that of the British Civil Service it seems ridiculous to believe that any of these states could not conduct workmen's compensation at least as efficiently as a private insurance corporation.

APPENDIX A

WORKMEN'S COMPENSATION IN EUROPE

States	Year of Enactment	Insurance C or E	Choice of Insurance Institution
Germany	1884	Compulsory	Employer's Mutual Associations only
Austria	1887	Compulsory	Employer's Mutual Associations only
Norway	1894	Compulsory	Government only
Finland	1895	Compulsory	Private Companies Mutual Associations
Great Britain	1897	Elective	Private Companies Mutual Associations
Denmark	1898	Elective	Private Companies Mutual Associations
Italy	1898	Compulsory	Private Companies Mutual Associations Government Institutions
France	1898	Elective	Private Companies Mutual Associations Government Institutions
Holland	1901	Compulsory	Private Companies Mutual Associations Government Institutions
Sweden	1901	Elective	Private Companies Mutual Associations Government Institutions
Belgium	1903	Elective	Private Companies Mutual Associations
Switzerland	1912	Compulsory	Government only

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Finland	1898	Compulsory	Private Companies Mutual Associations
Great Britain	1897	Elective	Private Companies Mutual Associations
Denmark	1898	Elective	Private Companies Mutual Associations
Italy	1898	Compulsory	Private Companies Mutual Associations Government Institutions
France	1898	Elective	Private Companies Mutual Associations Government Institutions
Holland	1901	Compulsory	Private Companies Mutual Associations Government Institutions
Sweden	1901	Elective	Private Companies Mutual Associations Government Institutions
Belgium	1903	Elective	Private Companies Mutual Associations
Switzerland	1912	Compulsory	Government only

APPENDIX B

COMPENSATION FOR PARTIAL INCAPACITY

Type of Injury	No. Wks.	Minimum*	Maximum**
(a) Loss of one arm at or above elbow	225	$ 1125.00	$ 4725.00
(b) Loss of one hand at or above wrist	175	875.00	3675.00
(c) Loss of one leg at or above knee	208	1040.00	4368.00
(d) Loss of one foot at or above ankle	156	780.00	3276.00
(e) Loss of complete or permanent hearing in both ears.	156	780.00	3276.00
(f) Loss of complete or permanent hearing in one ear	52	260.00	1092.00
(g) Loss of complete or permanent sight in one eye	156	780.00	3276.00
(h) Loss of, or the complete and permanent loss of, the use of a thumb	60	300.00	1260.00
(i) Loss of, or the complete and permanent loss of, the use of a first finger or a great toe	38	190.00	798.00
(j) Loss of, or the complete and permanent loss of, the use of -			
(1) Second finger	30	150.00	630.00
(2) Third finger	25	125.00	525.00
(3) Fourth finger	20	100.00	420.00
(k) Loss of, or the loss of the use of, any toe except the great toe.	13	65.00	273.00

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* Obtained by multiplying number of weeks by $5.00

** Obtained by multiplying number of weeks by $21.00

APPENDIX 3

COMPENSATION FOR PARTIAL INCAPACITY

Type of Injury	No. Wks.	Minimum*	Maximum**
(a) Loss of one arm at or above elbow	288	$ 1728.00	$ 4752.00
(b) Loss of one hand at or above wrist	178	972.00	2874.00
(c) Loss of one leg at or above knee	208	1040.00	4368.00
(d) Loss of one foot at or above ankle	156	780.00	3276.00
(e) Loss of complete or permanent hearing in both ears.	156	780.00	3276.00
(f) Loss of complete or permanent hearing in one ear	82	820.00	1968.00
(g) Loss of complete or permanent sight in one eye	156	780.00	3276.00
(h) Loss of, or the complete and permanent loss of, the use of a thumb	60	300.00	1260.00
(i) Loss of, or the complete and permanent loss of, the use of a first finger or a great toe	38	190.00	798.00
(j) Loss of, or the complete and permanent loss of, the use of -			
(1) Second finger	30	180.00	630.00
(2) Third finger	18	126.00	648.00
(3) Fourth finger	20	100.00	420.00
(k) Loss of, or the loss of the use of, any toe except the great toe.	14	84.00	378.00

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* Obtained by multiplying number of weeks by $5.00

** Obtained by multiplying number of weeks by $21.00

A P P E N D I X C

METHODS OF ADMINISTERING WORKMEN'S COMPENSATION LAWS

By a Single Commission, Board, Bureau or Commissioner, - 30 States, 1 Territory.	By Courts, - 8 States, 1 Territory.	Otherwise, - 4 States, 1 Territory.
California	Alabama *	Connecticut--by a single Commissioner in and for each of five autonomous districts.
Colorado	Arizona *	
Delaware	Kansas *	
Georgia	Louisiana *	
Idaho	New Hampshire *	
Illinois	New Mexico *	
Indiana	Tennessee *	
Kentucky	Wyoming *	
Maine		Iowa--generally, by a single Commissioner; but disputes are decided by Arbitration Committees.
Maryland	Alaska *	
Massachusetts		
Michigan		
Minnesota		
Montana		
Nebraska		
Nevada		
New Jersey		
North Dakota		New York--generally, by a single Commissioner; but judicial questions are decided by an Industrial Board.
Ohio		
Oklahoma		
Oregon		
Pennsylvania		
South Dakota		
Texas		
Utah		
Vermont		
Virginia		Rhode Island--generally, by a single Commissioner; but disputes are decided by the Courts.
Washington		
West Virginia		
Wisconsin		
		Hawaii--by an Industrial Accident Board in and for each county.
Porto Rico		

* The operations of the law or some of its provisions are to some extent supervised or administered by a designated official or officials.

Prepared by the Workmen's Compensation Publicity Bureau.

APPENDIX C

METHODS OF ADMINISTERING WORKMEN'S COMPENSATION LAWS

	By a single Commission, Board, Bureau or Commissioner. - 30 States, 1 Territory.	By Courts. - 8 States, 1 Territory.	Otherwise. - 4 States, 1 Territory.
California			
Colorado			
Delaware			
Georgia			
Idaho			
Illinois			
Indiana			
Kentucky			
Maine			
Maryland		Alaska *	
Massachusetts			
Michigan			
Minnesota			
Montana			
Nebraska			
Nevada			
New Jersey			
North Dakota			
Ohio			
Oklahoma			
Oregon			
Pennsylvania			
South Dakota			
Texas			
Utah			
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Porto Rico			
		Alabama *	Connecticut--by a single Commissioner in and for each of five autonomous districts.
		Arizona *	
		Kansas *	
		Louisiana *	
		New Hampshire *	
		New Mexico *	
		Tennessee *	
		Wyoming *	
			Iowa--generally, by a single Commissioner; but disputes are decided by Arbitration Committees.
			New York--generally, by a single Commissioner; but judicial questions are decided by an Industrial Board.
			Rhode Island--generally, by a single Commissioner; but disputes are decided by the Courts.
			Hawaii--by an Industrial Accident Board in and for each county.

* The operations of the law or some of its provisions are to some extent supervised or administered by a designated official or officials.

B I B L I O G R A P H Y

ARCHER, GLEASON L.
"The Law of Torts"
Suffolk Law School Press, Boston, Mass., 1916

BALDWIN, SIMEON E.
"The American Judiciary"
The Century Company, New York, N. Y., 1905

BLANCHARD, RALPH H.
"Liability and Compensation Insurance"
D. Appleton and Company, New York, N. Y., 1917

CASSIDY, HARRY M.
"The Emergence of the Free Labor Contract in England"
THE AMERICAN ECONOMIC REVIEW
The American Economic Association, Evanston, Ill., 1928

EASTMAN, CRYSTAL
"Work-accidents and the Law"
Russel Sage Foundation, New York, N. Y., 1916

ELY, RICHARD T.
"Outlines of Economics"
The Macmillan Company, New York, N. Y., 1923

FRANKEL, L. K., and DAWSON, M. M.
"Workingmen's Insurance in Europe"
Charities Publication Committee, New York, N. Y., 1910

GILBERT, BARRY
"Legal Cause and Negligence"
MODERN AMERICAN LAW SERIES
Blackstone Institute, Chicago, Ill., 1921

HEINRICH, H. W.
"Industrial Accident Prevention"
McGraw Hill Book Company, New York, N. Y., 1931

HOFFMAN, FREDERICK L.
"Industrial Accident Statistics"
BULLETIN OF THE U. S. BUREAU OF LABOR STATISTICS No. 157
Government Printing Office, Washington, D. C., 1915

B I B L I O G R A P H Y

JONES, F. ROBERTSON
"Digest of Workmen's Compensation Laws in the United States and Territories with Annotations"
Workmen's Compensation Publicity Bureau, New York, N. Y., 1924

MICHELBACHER, G. F. and NIAL, THOMAS M.
"Workmen's Compensation Insurance"
McGraw-Hill Book Company, New York, N.Y., 1925

PILLSBURY, WARREN H.
"Employers' Liability and Workmen's Compensation"
MODERN AMERICAN LAW SERIES
Blackstone Institute, Chicago, Ill., 1921

POUND, ROSCOE
"The Spirit of the Common Law"
Marshall Jones Company, Boston, Mass., 1921

RHODES, J. E., 2d
"Workmen's Compensation"
The Macmillan Company, New York, N. Y., 1917

RUBINOW, I. M.
"Social Insurance"
Henry Holt and Company, New York, N. Y., 1913

SEAGER, H. R.
"Social Insurance"
The Macmillan Company, New York, N. Y., 1910

WILLIS, W. ADDINGTON
"The Workmen's Compensation Acts"
Butterworth & Company, Ltd., London, England, 1927

TEXT OF THE CONNECTICUT WORKMEN'S COMPENSATION ACT AS AMENDED IN 1931

STATE OF CONNECTICUT - PUBLIC DOCUMENT (S. J. R. No. 228, Session 1907)

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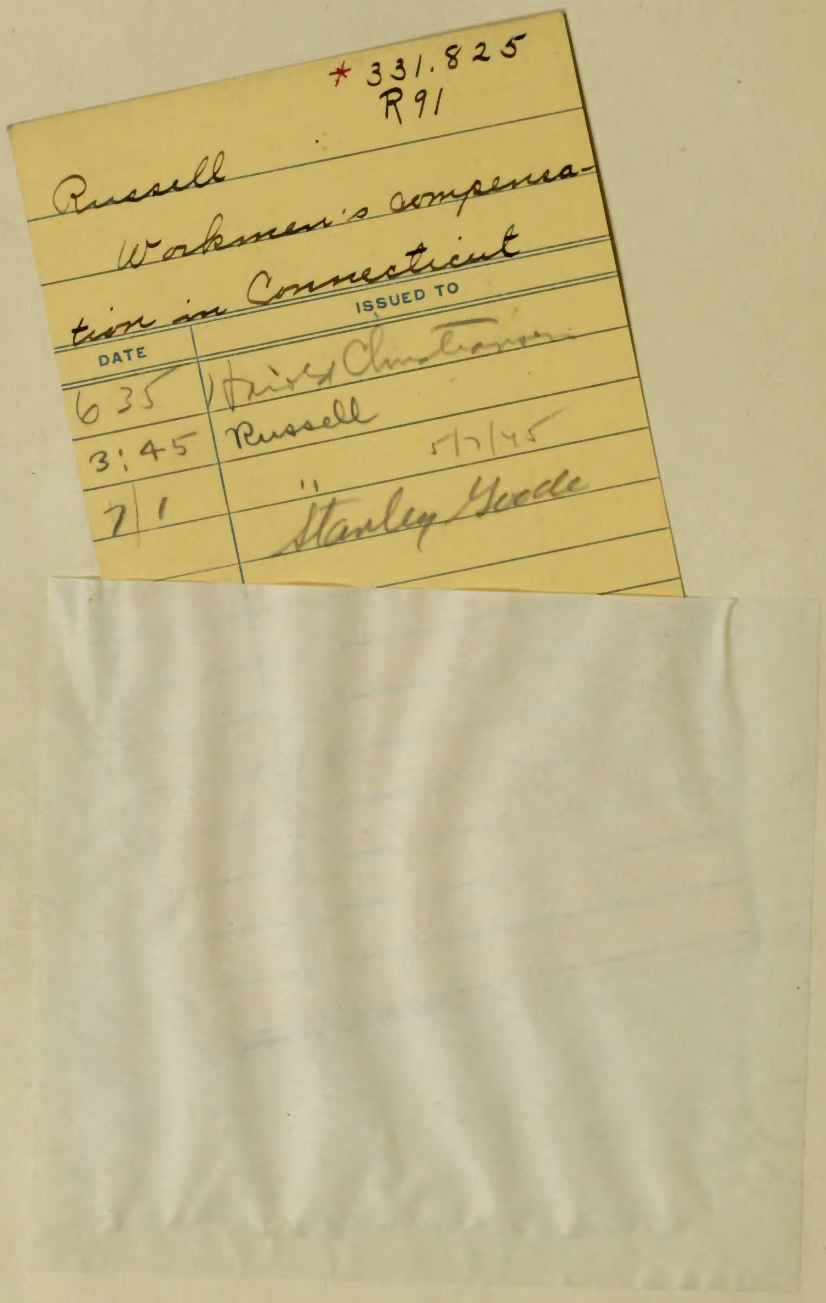

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